

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4231

BY DELEGATE SKINNER

[Introduced January 22, 2016; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201, §36B-1-203,
2 §36B-1-204, §36B-1-206 and §36B-1-207 of the Code of West Virginia, 1931, as
3 amended; to amend said code by adding thereto four new sections, designated §36B-1-
4 115, §36B-1-116, §36B-1-208 and §36B-1-209; to amend and reenact §36B-2-103, §36B-
5 2-105, §36B-2-106, §36B-2-109, §36B-2-112, §36B-2-113, §36B-2-116, §36B-2-117,
6 §36B-2-118 and §36B-2-119 of said code; to amend said code by adding thereto two new
7 sections, designated §36B-2-123 and §36B-2-124; to amend and reenact §36B-3-101,
8 §36B-3-102, §36B-3-103, §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-109, §36B-3-
9 110, §36B-3-111, §36B-3-112, §36B-3-113, §36B-3-114, §36B-3-115, §36B-3-116, §36B-
10 3-117 and §36B-3-118 of said code; to amend said code by adding thereto five new
11 sections, designated §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123 and §36B-3-124;
12 and to amend and reenact §36B-4-101, §36B-4-102, §36B-4-103, §36B-4-108, §36B-4-
13 109, §36B-4-112, §36B-4-113, §36B-4-114, §36B-4-116 and §36B-4-117 of said code, all
14 relating to updating the Uniform Common Interest Ownership Act; and providing for
15 applicability of the chapter.

Be it enacted by the Legislature of West Virginia:

1 That §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201, §36B-1-203, §36B-1-204, §36B-
2 1-206 and §36B-1-207 of the Code of West Virginia, 1931, as amended, be amended and
3 reenacted; that said code be amended by adding thereto four new sections, designated §36B-1-
4 115, §36B-1-116, §36B-1-208 and §36B-1-209; that §36B-2-103, §36B-2-105, §36B-2-106,
5 §36B-2-109, §36B-2-112, §36B-2-113, §36B-2-116, §36B-2-117, §36B-2-118 and §36B-2-119 of
6 said code be amended and reenacted; that said code be amended by adding thereto two new
7 sections, designated §36B-2-123 and §36B-2-124; that §36B-3-101, §36B-3-102, §36B-3-103,
8 §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-109, §36B-3-110, §36B-3-111, §36B-3-112,
9 §36B-3-113, §36B-3-114, §36B-3-115, §36B-3-116, §36B-3-117 and §36B-3-118 of said code be
10 amended and reenacted; that said code be amended by adding thereto five new sections,

11 designated §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123 and §36B-3-124; and that §36B-
12 4-101, §36B-4-102, §36B-4-103, §36B-4-108, §36B-4-109, §36B-4-112, §36B-4-113, §36B-4-
13 114, §36B-4-116 and §36B-4-117 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-103. Definitions.

1 In the declaration and bylaws (section one hundred six, article three of this chapter), unless
2 specifically provided otherwise or the context otherwise requires, and in this chapter:

3 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under
4 common control with a declarant. For purposes of this definition:

5 (A) A person "controls" a declarant if the person: (i) Is a general partner, officer, director
6 or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other
7 persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds
8 proxies representing, more than twenty percent of the voting interest in the declarant; (iii) controls
9 in any manner the election of a majority of the directors of the declarant; or (iv) has contributed
10 more than twenty percent of the capital of the declarant.

11 (B) A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer,
12 director or employer of the person; (ii) directly or indirectly or acting in concert with one or more
13 other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or
14 holds proxies representing, more than twenty percent of the voting interest in the person; (iii)
15 controls in any manner the election of a majority of the directors of the person; or (iv) has
16 contributed more than twenty percent of the capital of the person; and

17 (C) Control does not exist if the powers described in this paragraph are held solely as
18 security for an obligation and are not exercised.

19 (2) "Allocated interests" means the following interests allocated to each unit:

20 (A) In a condominium, the undivided interest in the common elements, the common
21 expense liability, and votes in the association;

22 (B) In a cooperative, the common expense liability, and the ownership interest, and votes
23 in the association; and

24 (C) In a planned community, the common expense liability and votes in the association.

25 (3) "Assessment" means the sum attributable to each unit and due to the association
26 pursuant to section one hundred fifteen, article three of this chapter.

27 ~~(3)~~ (4) "Association" or "unit owners association" means the unit owners association
28 organized under section one hundred one, article three of this chapter.

29 (5) "Bylaws" means instruments, however denominated, that contain the procedures for
30 conduct of the affairs of the association regardless of the form in which the association is
31 organized, including any amendments to the instruments.

32 ~~(4)~~ (6) "Common elements" means:

33 (A) In the case of: (i) A condominium or cooperative, all portions of the common interest
34 community other than the units; and

35 (ii) In A planned community, any real estate within a planned community which is owned
36 or leased by the association, other than a unit; and

37 (B) In all common interest communities, any other interests in real estate for the benefit of
38 unit owners which are subject to the declaration.

39 ~~(5)~~ (7) "Common expenses" means expenditures made by, or financial liabilities of, the
40 association, together with any allocations to reserves.

41 ~~(6)~~ (8) "Common expense liability" means the liability for common expenses allocated to
42 each unit pursuant to section one hundred seven, article two of this chapter.

43 ~~(7)~~ (9) "Common interest community" means real estate described in a declaration with
44 respect to which a person, by virtue of his the person's ownership of a unit, is obligated to pay for
45 a share of real estate taxes, insurance premiums, maintenance, or improvement of, or service or
46 other expenses related to, common elements, other units, or other real estate described in a the
47 declaration: *Provided*, That any resort owner which, prior to the effective date of this article, began

48 the development of a resort and imposed fees or assessments upon owners of real estate in the
49 resort for maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas
50 and common facilities in and around the resort, for fire and police protection and for such other
51 services as may be made available to owners of real estate, may also impose the same fees and
52 assessments to be used for the same or similar purposes upon persons purchasing real estate in
53 the resort after the effective date of this article without creating a common interest community.
54 The term does not include an arrangement described in sections two hundred nine and two
55 hundred ten of this article. For purposes of this paragraph, ownership of a unit does not include
56 holding a leasehold interest of less than twenty years in a unit, including renewal options.

57 ~~(8)~~ (10) "Condominium" means a common interest community in which portions of the real
58 estate are designated for separate ownership and the remainder of the real estate is designated
59 for common ownership solely by the owners of those portions. A common interest community is
60 not a condominium unless the undivided interest in the common elements are vested in the unit
61 owners.

62 ~~(9)~~ (11) "Conversion building" means a building that at any time before creation of the
63 common interest community was occupied wholly or partially by persons other than purchasers
64 and persons who that occupy with the consent of purchasers.

65 ~~(10)~~ (12) "Cooperative" means a common interest community in which the real estate is
66 owned by an association, each of whose members is entitled by virtue of his or her ownership
67 interest in the association to exclusive possession of a unit.

68 ~~(11)~~ (13) "Dealer" means a person in the business of selling units for his or her own
69 account.

70 ~~(12)~~ (14) "Declarant" means any person or group of persons acting in concert who: (i)(A)
71 As part of a common promotional plan, offers to dispose of his or the interest of the person or
72 group of persons in a unit not previously disposed of; or (ii)(B) reserves or succeeds to any special
73 declarant right.

74 ~~(13)~~ (15) "Declaration" means any the instruments, however denominated, that create a
75 common interest community, including any amendments to those the instruments.

76 ~~(14)~~ (16) "Development rights" means any right or combination of rights reserved by a
77 declarant in the declaration to: (i)(A) Add real estate to a common interest community; (ii)(B)
78 create units, common elements or limited common elements within a common interest
79 community; (iii) (C) subdivide units or convert units into common elements; or (iv) (D) withdraw
80 real estate from a common interest community.

81 ~~(15)~~ (17) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal
82 or equitable interest in a unit, but the term does not include the transfer or release of a security
83 interest.

84 ~~(16)~~ (18) "Executive board" means the body, regardless of name, designated in the
85 declaration or bylaws to act on behalf of the association.

86 ~~(17)~~ (19) "Identifying number" means a symbol or address that identifies only one unit in
87 a common interest community.

88 ~~(18)~~ (20) "Leasehold common interest community" means a common interest community
89 in which all or a portion of the real estate is subject to a lease, the expiration or termination of
90 which will terminate the common interest community or reduce its size.

91 ~~(19)~~ (21) "Limited common element" means a portion of the common elements allocated
92 by the declaration or by operation of subdivision (2) or (4), section one hundred two, article two
93 of this chapter for the exclusive use of one or more but fewer than all of the units.

94 ~~(20)~~ (22) "Master association" means an organization described in section one hundred
95 twenty, article two of this chapter, whether or not it is also an association described in section one
96 hundred one, article three of this chapter.

97 ~~(21)~~ (23) "Offering" means any advertisement, inducement, solicitation or attempt to
98 encourage any person to acquire any interest in a unit, other than as security for an obligation.
99 An advertisement in a newspaper or other periodical of general circulation, or in any broadcast

100 medium to the general public, of a common interest community not located in this state, is not an
101 offering if the advertisement states that an offering may be made only in compliance with the law
102 of the jurisdiction in which the common interest community is located.

103 ~~(22)~~ (24) "Person" means an individual, corporation, business trust, estate, trust,
104 partnership, limited liability company, association, joint venture, public corporation, government,
105 governmental subdivision, or agency, or instrumentality, or any other legal or commercial entity.
106 In the case of a land trust, the corpus of which is real estate, however, "person" the term means
107 the beneficiary of the trust rather than the trust or the trustee.

108 ~~(23)~~ (25) "Planned community" means a common interest community that is not a
109 condominium or a cooperative. A condominium or cooperative may be part of a planned
110 community.

111 ~~(24)~~ (26) "Proprietary lease" means an agreement with the association pursuant to which
112 a member is entitled to exclusive possession of a unit in a cooperative.

113 ~~(25)~~ (27) "Purchaser" means a person, other than a declarant or a dealer, who that by
114 means of a voluntary transfer acquires a legal or equitable interest in a unit other than: (i)(A) A
115 leasehold interest (including renewal options) of less than twenty years; or (ii)(B) as security for
116 an obligation.

117 ~~(26)~~ (28) "Real estate" means any leasehold or other estate or interest in, over, or under
118 land, including structures, fixtures and other improvements and interest that by custom, usage or
119 law pass with a conveyance of land though not described in the contract of sale or instrument of
120 conveyance. "Real estate" The term includes parcels with or without upper or lower boundaries,
121 and spaces that may be filled with air or water.

122 (29) "Record", used as a noun, means information that is inscribed on a tangible medium
123 or that is stored in an electronic or other medium and is retrievable in perceivable form.

124 ~~(27)~~ (30) "Residential purposes" means use for dwelling or recreational purposes, or both.

125 (31) "Rule" means a policy, guideline, restriction, procedure, or regulation of an

126 association, however denominated, which is not set forth in the declaration or bylaws and which
127 governs the conduct of persons or the use or appearance of property.

128 ~~(28)~~ (32) "Resort" means a destination location which consists of: (i)(A) One or more
129 persons offering recreational facilities and services such as skiing, golf, tennis or boating to the
130 general public and commercial facilities such as retail stores, restaurants and hotels or other
131 lodging accommodations; and (ii)(B) at least one hundred residential units, a majority of which
132 are used as vacation or second homes rather than primary residences.

133 ~~(29)~~ (33) "Resort owner" means any person owning or operating substantially all of the
134 recreational facilities located within a resort, or the predecessor in title of any such person.

135 ~~(30)~~ (34) "Security interest" means an interest in real estate or personal property, created
136 by contract or conveyance, which secures payment or performance of an obligation. The term
137 includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed,
138 land sales contract, lease intended as security, assignment of lease or rents intended as security,
139 pledge of an ownership interest in an association, and any other consensual lien or title retention
140 contract intended as security for an obligation.

141 ~~(34)~~ (35) "Special declarant rights" means rights reserved for the benefit of a declarant to:

142 (i)(A) Complete improvements indicated on plans and plans filed with the declaration
143 pursuant to section one hundred nine, article two of this chapter or, in a cooperative, to complete
144 improvements described in the public offering statement pursuant to subdivision (2), subsection
145 (a), section one hundred three, article four of this chapter;

146 (ii) (B) exercise any development right pursuant to section one hundred ten, article two of
147 this chapter;

148 (iii)(C) maintain sales offices, management offices, signs advertising the common interest
149 community, and models pursuant to section one hundred fifteen, article two of this chapter;

150 (iv)(D) use easements through the common elements for the purpose of making
151 improvements within the common interest community or within real estate which may be added

152 to the common interest community pursuant to section one hundred sixteen, article two of this
153 chapter;

154 (v)(E) make the common interest community subject to a master association pursuant to
155 section one hundred twenty, article two of this chapter;

156 (vi)(F) merge or consolidate a common interest community with another common interest
157 community of the same form of ownership pursuant to section one hundred twenty-one, article
158 two of this chapter; or

159 (vii)(G) appoint or remove any officer of the association or any master association or any
160 executive board member during any period of declarant control pursuant to subsection (d), section
161 one hundred three, article three of this chapter;

162 (H) Control any construction, design review, or aesthetic standards committee or process;

163 (ix)(I) Attend meetings of the unit owners and, except during an executive session, the
164 executive board; or

165 (J) Have access to the records of the association to the same extent as a unit owner.

166 ~~(32)~~ (36) "Time share" means a right to occupy a unit or any of several units during five or
167 more separated time periods over a period of at least five years, including renewal options,
168 whether or not coupled with an estate or interest in a common interest community or a specified
169 portion thereof.

170 ~~(33)~~ (37) "Unit" means a physical portion of the common interest community designated
171 for separate ownership or occupancy, the boundaries of which are described pursuant to
172 subdivision (5), subsection (a), section one hundred five, article two of this chapter. If a unit in a
173 cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered
174 or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed,
175 encumbered, or otherwise transferred is the right to possession of that unit under a proprietary
176 lease, coupled with the allocated interests of that unit, and the association's interest in that unit is
177 not thereby affected.

178 (34) (38) "Unit owner" means a declarant or other person who that owns a unit, or a lessee
179 of a unit in a leasehold common interest community whose lease expires simultaneously with any
180 lease, the expiration or termination of which will remove the unit from the common interest
181 community, but does not include a person having an interest in a unit solely as security for an
182 obligation. In a condominium or planned community, the declarant is the owner of any unit created
183 by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which
184 allocated interests have been allocated pursuant to section one hundred seven, article two of this
185 chapter) until that unit has been conveyed to another person.

§36B-1-104. No variation by agreement.

1 Except as expressly provided in this chapter, provisions herein the effect of its provisions
2 may not be varied by agreement, and rights conferred by it may not be waived. Except as
3 otherwise provided in section two hundred seven of this article, a declarant may not act under a
4 power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter
5 or the declaration.

§36B-1-108. Supplemental general principles of law applicable.

1 The principles of law and equity, including the law of corporations, and unincorporated
2 associations and any other form of organization authorized by the laws of this state, the law of
3 real property estate, and the law relative to capacity to contract, principal and agent, eminent
4 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial
5 performance, or other validating or invalidating cause supplement the provisions of this chapter,
6 except to the extent inconsistent with this chapter.

§36B-1-115. Severability.

1 If any provision of this chapter or the application thereof to any person or circumstances
2 is held invalid, the invalidity does not affect other provisions or applications of this chapter which
3 can be given effect without the invalid provisions or applications, and to this end the provisions of
4 this chapter are severable.

§36B-1-116. Relation to Electronic Signatures in Global and National Commerce Act.

1 This chapter modifies, limits and supersedes the federal Electronic Signature in Global
 2 and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or
 3 supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery
 4 of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

PART II. APPLICABILITY.

§36B-1-201. Applicability to new common interest communities.

1 Except as otherwise provided in this article sections 1-202 and 1-203, this chapter applies
 2 to all common interest communities created within this state after the effective date of this chapter.
 3 The provisions of chapter fifty-three, Acts of the Legislature, 1963, chapter one hundred twenty-
 4 nine, Acts of the Legislature, 1980, and chapter thirty-eight, Acts of the Legislature, 1984, do not
 5 apply to common interest communities created after the effective date of this chapter.
 6 Amendments to this chapter apply to all common interest communities created after the effective
 7 date of this chapter or made subject to this chapter by amendment of the declaration of the
 8 common interest community, regardless of when the amendment to this chapter becomes
 9 effective.

§36B-1-203. Exception for small and limited expense liability planned communities.

1 (a) If a planned community that is not subject to any development right:
 2 (1) Contains no more than twelve units; and is not subject to any development rights or
 3 (2) Provides, in its declaration, that the annual average common expense liability of all
 4 units restricted to residential purposes, exclusive of optional user fees and any insurance
 5 premiums paid by the association, may not exceed \$300 as adjusted pursuant to section one
 6 hundred fourteen of this article (adjustment of dollar amounts), it is subject only to sections one
 7 hundred five of this article (separate titles and taxation), one hundred six of this article
 8 (applicability of local ordinances, regulations and building codes), and one hundred seven of this
 9 article (eminent domain), one hundred sixteen of article three (lien for sums due associations;

10 enforcement), and one hundred seventeen of article four (effect of violation on rights of action:
11 attorney's fees) unless the declaration provides that this entire chapter is applicable.

12 (b) The exemption provided in subdivision (2), subsection (a) of this section applies only
13 if:

14 (1) The declarant reasonably believes in good faith that the maximum stated assessment
15 will be sufficient to pay the expenses of the planned community; and

16 (2) The declaration provides that the assessment may not be increased above the
17 limitation in subdivision (2), subsection (a) of this section during the period of declarant control
18 without the consent of all unit owners.

19 (c) If the exemption provided in subdivision (2), subsection (a) of this section was included
20 in a declaration recorded prior to the effective date of this amendment:

21 (1) The sum stated in that declaration shall adjust pursuant to section one hundred
22 fourteen of this article (adjustment of dollar amounts):

23 (2) The annual average common expense liability of the units may exceed \$300, as
24 adjusted pursuant to section one hundred fourteen of this article, if the limitation in the declaration
25 prevents the association from: (i) Fulfilling any duty to maintain real estate owned or leased by
26 the association or improvements thereto, or (ii) fulfilling any other duty imposed on the association
27 by the declaration, articles, bylaws or applicable law; and

28 (3) If the declarant no longer owns any unit, the declaration may be amended by sixty-
29 seven percent of the units to allow the association to meet its actual financial needs,
30 notwithstanding any provision in the declaration to the contrary. An amendment made in
31 accordance with this subsection will not cause the community to be subject to any greater
32 provisions of this chapter than set forth in subdivision (2), subsection (a) of this section.

33 (d) Any declarant electing the exemption provided in subdivision (2), subsection (a) of this
34 section shall record with the declaration the predevelopment budget which is the basis for its
35 subdivision (2), subsection (c) of this section determination of post-development annual average

36 common expense liability.

§36B-1-204. Applicability to preexisting common interest communities.

1 (a) Except as provided in section 1-205, Same; exception for small preexisting
 2 cooperatives and planned communities, sections 1-105 (separate titles and taxation), 1-106
 3 (Applicability of local ordinances, regulations and building codes), 1-107 (Eminent domain), 2-103
 4 (Construction and validity of declaration and bylaws), 2-104 (Description of units), 2-121 (Merger
 5 or consolidation of common interest communities), 3-102(a)(1) through (6) and (11) through (16)
 6 (Powers of unit owners' association), 3-111 (Tort and contract liability), 3-116 (Lien for
 7 assessments), 3-118 (Association records), 4-109 (Resales of units), and 4-117 (Effect of
 8 violation on rights of action; attorney's fees), and section 1-103 (Definitions) to the extent
 9 necessary in construing any of those sections, apply to all common interest communities created
 10 in this state before the effective date of this chapter; but those sections apply only with respect to
 11 events and circumstances occurring after the effective date of this chapter and do not invalidate
 12 existing provisions of the declaration, bylaws or plats or plans of those common interest
 13 communities. Except for a cooperative or planned community described in section two hundred
 14 five of this article (same-exception for small preexisting cooperatives and planned communities),
 15 or a nonresidential common interest community described in section two hundred seven (same;
 16 exception for small preexisting cooperatives and planned communities), the following sections
 17 apply to a common interest community created in this state before the effective date of this article:

18 (1) Section one hundred five of this article (separate titles and taxation);

19 (2) Section one hundred six of this article (applicability of local ordinances, regulations,
 20 and building codes);

21 (3) Section one hundred seven of this article (eminent domain);

22 (4) Section two hundred six of this article (amendments to governing instruments);

23 (5) Section one hundred two, article two of this chapter (unit boundaries);

24 (6) Section one hundred three, article two of this chapter (construction and validity of

25 declaration and bylaws);

26 (7) Section one hundred four, article two of this chapter (description of units);

27 (8) Subsections (h) and (i), section one hundred seventeen, article two (amendment of
28 declaration);

29 (9) Section one hundred twenty-one, article two of this chapter (merger or consolidation
30 of common interest communities);

31 (10) Section one hundred twenty-four, article two of this chapter (termination following
32 catastrophe);

33 (11) Subdivisions (1) through (6) and (11) through (16), subsection (a), section one
34 hundred two, article three of this chapter (powers and duties of unit owners association);

35 (12) Section one hundred three, article three of this chapter (executive board members
36 and officers);

37 (13) Section one hundred eight, article three (meetings);

38 (14) Section one hundred eleven, article three of this chapter (tort and contract liability);

39 (15) Section one hundred sixteen, article three of this chapter (lien for assessments);

40 (16) Section one hundred eighteen, article three of this chapter (association records);

41 (17) Section one hundred twenty-four, article three of this chapter (litigation involving
42 declarant);

43 (18) Section one hundred nine, article four of this chapter (resale of units);

44 (19) Section one hundred seventeen, article four of this chapter (effect of violation on rights
45 of action; attorney's fees); and

46 (20) Section one hundred three of this article (definitions) to the extent necessary to
47 construe any of those sections.

48 (b) The sections described in subsection (a) apply only to events and circumstances
49 occurring after the effective date of this chapter and do not invalidate existing provisions of the
50 declaration, bylaws, or plats or plans of those common interest communities.

51 ~~(b)~~ (c) The provisions of chapter one hundred fifty-three, Acts of the Legislature, 1963,
52 chapter one hundred twenty-nine, Acts of the Legislature, 1980, or of chapter thirty-eight, Acts of
53 the Legislature, 1984, do not apply to condominiums or other common interest communities
54 created after the effective date of this chapter and do not invalidate any amendment to the
55 declaration, rules, bylaws, plats and plans and code of regulations of any condominium or
56 common interest community created before the effective date of this chapter if the amendment
57 would be permitted by this chapter. The amendment must be adopted in conformity with the
58 procedures and requirements specified by those instruments and by chapter one hundred fifty-
59 three, Acts of the Legislature, 1963. If the amendment grants to any person any rights, powers
60 or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this
61 chapter also apply to that person.

62 ~~(c)~~ (d) This chapter does not apply to condominiums or units located outside this state, but
63 the public offering statement provisions, (sections 4-102 through 4-109) apply to all contracts for
64 the disposition thereof signed in this state by any party unless exempt under section 4-101(b).

65 ~~(d)~~ (e) The provisions of this chapter shall apply to all condominiums or common interest
66 communities to the extent such provisions conflict or are inconsistent with the provisions of
67 chapter one hundred fifty-three, Acts of the Legislature, 1963: *Provided*, That the provisions of
68 this chapter shall not modify, limit or nullify any rights, duties or obligations created or existing
69 under any declaration, bylaws or plats or plans of condominiums created in this state before the
70 effective date of this chapter.

§36B-1-206. Amendments to governing instruments.

1 (a) In the case of amendments to The declaration, bylaws or plats and plans of any
2 common interest community created before the effective date of this chapter may be amended to
3 achieve any result permitted by this chapter, regardless of what applicable law provided before
4 this chapter was adopted.

5 (1) If the result accomplished by the amendment was permitted by law prior to this chapter,

6 the amendment may be made either in accordance with that law, in which case that law applies
7 to that amendment, or it may be made under this chapter, and

8 (2) If the result accomplished by the amendment is permitted by this chapter, and was not
9 permitted by law prior to this chapter, the amendment may be made under this chapter.

10 (b) Except as otherwise provided in subsections (i) and (j) of section one hundred
11 seventeen, article two of this chapter, an amendment to the declaration, bylaws, or plats and plans
12 authorized by this section to be made under this chapter must be adopted in conformity with
13 applicable law and with any the procedures and requirements for amending the instruments
14 specified by those instruments, or if there are none, in conformity with the amendment procedures
15 of this chapter. If an amendment grants to any a person any rights, powers or privileges any right,
16 power or privilege permitted by this chapter, all any correlative obligations, liabilities and
17 restrictions liability, or restriction in this chapter also apply applies to that person.

§36B-1-207. Applicability to nonresidential and mixed-use common interest communities.

1 (a) Except as otherwise provided in subsection (d), this section applies only to ~~This chapter~~
2 ~~does not apply to a~~ common interest ~~planned~~ community in which all units are restricted
3 exclusively to nonresidential purposes. ~~use unless the declaration provides that the chapter does~~
4 ~~apply to that planned community. This chapter applies to a planned community containing both~~
5 ~~units that are restricted exclusively to nonresidential use and other units that are not restricted,~~
6 ~~only if the declaration so provides or the real estate comprising the units that may be used for~~
7 ~~residential purposes would be a planned community in the absence of the units that may not be~~
8 ~~used for residential purposes.~~

9 (b) A nonresidential common interest community is not subject to this chapter except to
10 the extent the declaration provides that:

11 (1) This entire chapter applies to the community;

12 (2) Articles one and two apply to the community; or

13 (3) In the case of a planned community or a cooperative, only sections one hundred five
14 (Separate titles and taxation), one hundred six (applicability of local ordinance, regulations and
15 building codes), and one hundred seven (eminent domain) of this article apply to the community.

16 (c) If this entire chapter applies to a nonresidential common interest community, the
17 declaration may also require, subject to section one hundred twelve of this article (unconscionable
18 agreement or term of contract), that:

19 (1) Notwithstanding section one hundred five, article three of this chapter (termination of
20 contracts and leases of declarant), and management, maintenance, operations, or employment
21 contract, lease of recreational or parking areas or facilities, and any other contract or lease
22 between the association and a declarant or an affiliate of a declarant, the declaration continues
23 in force after the declarant turns over control of the association; and

24 (2) Notwithstanding section one hundred four of this article (variation by agreement),
25 purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the
26 declarant regarding particular matters enumerated in those instruments.

27 (d) A common interest community that contains units restricted exclusively to
28 nonresidential purposes and other units that may be used for residential purposes would comprise
29 a common interest community that would be subject to this chapter in the absence of the
30 nonresidential units or the declaration provides that this chapter applies as provided in subsection
31 (b) or (c) of this section.

§36B-1-208. Applicability to Out-of-State Common Interest Communities.

1 This chapter does not apply to a common interest community located outside this state,
2 but sections one hundred two and one hundred three, article four of this chapter and, to the extent
3 applicable sections one hundred four through one hundred six, article four of this chapter apply
4 to a contract for the disposition of a unit in that common interest community signed in this state

5 by any party unless exempt under subsection (b), section one hundred one, article four of this
 6 chapter.

§36B-1-209. Other Exempt Real Estates Arrangements.

1 (a) An arrangement between the associations for two or more common interest
 2 communities to share the costs of real estate taxes, insurance premiums, services, maintenance
 3 or improvements of real estate, or other activities specified in their arrangement or declarations
 4 does not create a separate common interest community.

5 (b) An arrangement between an association and the owner of real estate that is not part
 6 of a common interest community to share the costs of real estate taxes, insurance premiums,
 7 services, maintenance or improvements of real estate, or other activities specified in their
 8 arrangement or declarations does not create a separate common interest community. However,
 9 assessments against the units in the common interest community required by the arrangement
 10 must be included in the periodic budget for the common interest community and the arrangement
 11 must be disclosed in all public offering statements and resale certificates required by this chapter.

**ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON
 INTEREST COMMUNITIES.**

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are severable.

2 (b) The rule against perpetuities does not apply to defeat any provision of the declaration,
 3 bylaws ~~or rules. or regulations adopted pursuant to section 3-102(a)(1)~~

4 (c) ~~In the event of~~ If a conflict exists between the ~~provisions of the~~ declaration and the
 5 bylaws, the declaration prevails except to the extent the declaration is inconsistent with this
 6 chapter.

7 (d) Title to a unit and common elements is not rendered unmarketable or otherwise

8 affected by reason of an insubstantial failure of the declaration to comply with this chapter.

9 Whether a substantial failure impairs marketability is not affected by this chapter.

10 (e) A declaration or the bylaws may not change or alter a restrictive covenant in a deed to
11 any real estate that is or that becomes subject to the provisions of this chapter. The restrictive
12 covenants that are in effect at the time real estate is purchased that is or that becomes subject to
13 the provisions of this chapter may not be changed or altered as to the purchaser of that real estate
14 or as to any assign, heir or beneficiary of the original purchaser unless that original purchaser,
15 assign, heir or beneficiary agrees in writing to a change of a restrictive covenant. This subdivision
16 does not apply to the change of restrictive covenants of homeowner fees if the fees do not exceed
17 the sum of ~~\$100~~ \$300 a year. The provisions of this section have no application to restrictive
18 covenants which contain provisions authorizing amendment when those provisions for
19 amendment are duly followed.

§36B-2-105. Contents of declaration.

1 (a) The declaration must contain:

2 (1) The names of the common interest community and the association and a statement
3 that the common interest community is either a condominium, cooperative or planned community;

4 (2) The name of every county in which any part of the common interest community is
5 situated;

6 (3) A legally sufficient description of the real estate included in the common interest
7 community;

8 (4) A statement of the maximum number of units that the declarant reserves the right to
9 create;

10 (5) In a condominium or planned community, a description of the boundaries of each unit
11 created by the declaration, including the unit's identifying number or, in a cooperative, a

12 description, which may be by plats or plans, of each unit created by the declaration, including the
13 unit's identifying number, its size or number of rooms and its location within a building if it is within
14 a building containing more than one unit;

15 (6) A description of any limited common elements, other than those specified in section 2-
16 102(2) and (4), as provided in section 2-109(b)(10) and, in a planned community, any real estate
17 that is or must become common elements;

18 (7) A description of any real estate, except real estate subject to development rights, that
19 may be allocated subsequently as limited common elements, other than limited common elements
20 specified in section 2-102(2) and (4), together with a statement that they may be so allocated;

21 (8) A description of any development rights (~~section 1-103(14)~~) and other special
22 declarant rights (~~section 1-103(29)~~) reserved by the declarant, together with a legally sufficient
23 description of the real estate to which each of those rights applies, and a time limit within which
24 each of those rights must be exercised;

25 (9) If any development right may be exercised with respect to different parcels of real
26 estate at different times, a statement to that effect together with

27 (i) (A) Either a statement fixing the boundaries of those portions and regulating the order
28 in which those portions may be subjected to the exercise of each development right or a statement
29 that no assurances are made in those regards; and

30 (ii) (B) A statement as to whether, if any development right is exercised in any portion of
31 the real estate subject to that development right, that development right must be exercised in all
32 or in any other portion of the remainder of that real estate;

33 (10) Any other conditions or limitations under which the rights described in paragraph (8)
34 may be exercised or will lapse;

35 (11) An allocation to each unit of the allocated interests in the manner described in section

36 2-107;

37 (12) Any restrictions ~~(i) on use, occupancy and~~ on alienation of the units, including any
38 restrictions on leasing which exceed the restrictions on leasing units which executive boards may
39 impose pursuant to section 3-102(c)(2) 3-120(d) and ~~(ii)~~ on the amount for which a unit may be
40 sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty
41 loss to the unit or to the common interest community, or on termination of the common interest
42 community;

43 (13) The recording data for recorded easements and licenses appurtenant to or included
44 in the common interest community or to which any portion of the common interest community is
45 or may become subject by virtue of a reservation in the declaration; ~~and~~

46 (14) Any authorization pursuant to which the association may establish and enforce
47 construction and design criteria and aesthetic standards as provided in sections 3-106 and 3-120;
48 and

49 ~~(14)~~ (15) All matters required by sections 2-106, 2-107, 2- 108, 2-109, 2-115, 2-116 and
50 3-103(d).

51 (b) The declaration may contain any other matters the declarant considers appropriate,
52 including any restrictions on the uses of a unit or the number or other qualifications of persons
53 who may occupy units.

§36B-2-106. Leasehold common interest communities..

1 (a) Any lease the expiration or termination of which may terminate the common interest
2 community or reduce its size, or a memorandum thereof, must be recorded. Every lessor of those
3 leases in a condominium or planned community shall sign the declaration. The declaration must
4 state:

5 (1) The recording data for the lease or a statement of where the complete lease may be

6 inspected;

7 (2) The date on which the lease is scheduled to expire;

8 (3) A legally sufficient description of the real estate subject to the lease;

9 (4) Any right of the unit owners to redeem the reversion and the manner whereby those
10 rights may be exercised, or a statement that they do not have those rights;

11 (5) Any right of the unit owners to remove any improvements within a reasonable time
12 after the expiration or termination of the lease, or a statement that they do not have those rights;

13 and

14 (6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or
15 a statement that they do not have those rights.

16 (b) After the declaration for a leasehold condominium or leasehold planned community is
17 recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold
18 interest of a unit owner who makes timely payment of a unit owner's share of the rent and
19 otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the
20 lease. A unit owner's leasehold interest in a condominium or planned community is not affected
21 by failure of any other person to pay rent or fulfill any other covenant.

22 (c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or
23 remainder does not merge the leasehold and fee simple interests unless the leasehold interests
24 of all unit owners subject to that reversion or remainder are acquired.

25 (d) If the expiration or termination of a lease decreases the number of units in a common
26 interest community, the allocated interests must be reallocated in accordance with section 1-
27 107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by
28 an amendment to the declaration prepared, executed, and recorded by the association.

§36B-2-109. Plats and plans.

1 (a) Plats and plans are a part of the declaration and are required for all common interest
2 communities except cooperatives. Separate plats and plans are not required by this chapter if all
3 the information required by this section is contained in either a plat or plan. Each plat and plan
4 must be clear and legible and contain a certification that the plat or plan contains all information
5 required by this section.

6 (b) Each plat must show:

7 (1) The name and a survey or general schematic map of the entire common interest
8 community;

9 (2) The location and dimensions of all real estate not subject to development rights, or
10 subject only to the development right to withdraw and the location and dimensions of all existing
11 improvements within that real estate;

12 (3) A legally sufficient description of any real estate subject to development rights, labeled
13 to identify the rights applicable to each parcel, but plats and plans need not designate or label
14 which development rights are applicable to each parcel if that information is clearly delineated in
15 the declaration.

16 (4) The extent of any encroachments by or upon any portion of the common interest
17 community;

18 (5) To the extent feasible, a legally sufficient description of all easements serving or
19 burdening any portion of the common interest community;

20 (6) Except as otherwise provided in subsection (h), the approximate The location and
21 dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to
22 subsection (d) and that unit's identifying number;

23 (7) Except as otherwise provided in subsection (h), the approximate the location with
24 reference to an established datum of any horizontal unit boundaries not shown or projected on

25 plans recorded pursuant to subsection (d) and that unit's identifying number;

26 (8) A legally sufficient description of any real estate in which the unit owners will own only
27 an estate for years, labeled as "leasehold real estate";

28 (9) The distance between noncontiguous parcels of real estate comprising the common
29 interest community;

30 (10) The approximate location and dimensions of limited common elements, including
31 porches, decks, balconies, garages, and or patios, ~~other than parking spaces and the other limited~~
32 ~~common elements described in sections 2-102(2) and (4) allocated as limited common elements,~~
33 and show or contain a narrative description of any other limited common elements; and

34 (11) ~~In the case of~~ For real estate not subject to development rights, all other matters
35 customarily shown on land surveys.

36 (c) A plat may also show the intended location and dimensions of any contemplated
37 improvement to be constructed anywhere within the common interest community. Any
38 contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE
39 BUILT."

40 (d) Except as otherwise provided in subsection (h), to the extent not shown or projected
41 on the plats, plans of the units must show or project:

42 (1) The approximate location and dimensions of the vertical boundaries of each unit and
43 that unit's identifying number;

44 (2) The approximate location of any horizontal unit boundaries, with reference to an
45 established datum and that unit's identifying number; and

46 (3) ~~Any~~ The approximate location of any units in which the declarant has reserved the right
47 to create additional units or common elements (section 2- 110(c)), identified appropriately.

48 (e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit

49 located outside a building have the same elevation as the horizontal boundaries of the inside part
50 and need not be depicted on the plats and plans.

51 (f) Upon exercising any development right, the declarant shall record either new plats and
52 plans necessary to conform to the requirements of subsections (a), (b) and (d) or new
53 certifications of plats and plans previously recorded if those plats and plans otherwise conform to
54 the requirements of those subsections.

55 (g) ~~Any~~ A certification of a plat or plan required by this section or section 2-101(b) must be
56 made by an independent (registered) surveyor, architect or engineer.

57 (h) Plats and plans need not show the location and dimensions of the units' boundaries or
58 their limited common elements if:

59 (1) The plat shows the location and dimensions of all buildings containing or comprising
60 the units; and

61 (2) The declaration includes other information that shows or contains a narrative
62 description of the general layout of the units in those buildings and the limited common elements
63 allocated to those units.

§36B-2-112. Relocation of boundaries between adjoining units.

1 (a) Subject to the provisions of the declaration and other provisions of law, the boundaries
2 between adjoining units may be relocated by an amendment to the declaration upon application
3 to the association by the owners of those units. If the owners of the adjoining units have specified
4 a reallocation between their units of their allocated interests, the application must state the
5 proposed reallocations. Unless the executive board determines, within thirty days, that the
6 reallocations are unreasonable, the association shall prepare an amendment that identifies the
7 units involved and states the reallocations. The amendment must be executed by those unit
8 owners, contain words of conveyance between them, and, on recordation, be indexed in the name

9 of the grantor and the grantee, and in the grantee's index in the name of the association.

10 (b) Subject to the provisions of the declaration and other provisions of law, boundaries
11 between units and common elements may be relocated to incorporate common elements within
12 a unit by an amendment to the declaration upon application to the association by the owner of the
13 unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the
14 amendment may be approved only if persons entitled to cast at least sixty-seven percent of the
15 votes in the association, including sixty-seven percent of the votes allocated to units not owned
16 by the declarant, agree to the action. The amendment may describe any fees or charges payable
17 by the owner of the affected unit in connection with the boundary relocation and the fees and
18 charges are assets of the association. The amendment must be executed by the unit owner of
19 the unit whose boundary is being relocated and by the association, contain words of conveyance
20 between them, and on recordation be indexed in the name of the unit owner and the association
21 as grantor or grantee, as appropriate.

22 ~~(b)~~ (c) The association: (i) In a condominium or planned community shall prepare and
23 record plats or plans necessary to show the altered boundaries between adjoining units and their
24 dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record
25 amendments to the declaration, including any plans, necessary to show or describe the altered
26 boundaries between adjoining units and their dimensions and identifying numbers.

§36B-2-113. Subdivision of units.

1 (a) If the declaration expressly so permits, a unit may be subdivided into two or more units.
2 Subject to ~~the provisions of the declaration and other provisions of law other than this chapter,~~
3 upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and
4 record an amendment to the declaration, including in a condominium or planned community, the
5 plats and plans, subdividing that unit.

6 (b) The amendment to the declaration must be executed by the owner of the unit to be
7 subdivided, assign an identifying number to each unit created, and reallocate the allocated
8 interests formerly allocated to the subdivided unit to the new units in any reasonable manner
9 prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

§36B-2-116. Easement rights.

1 (a) Subject to ~~the provisions of~~ the declaration, a declarant has an easement through the
2 common elements as may be reasonably necessary for the purpose of discharging the declarant's
3 obligations or exercising special declarant rights, whether arising under this chapter or reserved
4 in the declaration.

5 (b) ~~In a planned community, Subject to the provisions of sections 3-102(a)(6) and 3-112,~~
6 the unit owners have an easement (i) in the common elements for ~~purposes of~~ access to their
7 units ~~and(ii) to use the common elements and all real estate that must become common elements~~
8 ~~(section 2-105(a)(6)) for all other purposes.~~

9 (c) Subject to the declaration and rules, the unit owners have a right to use the common
10 elements that are not limited common elements and all real estate that must become common
11 elements (section 2-105(a)(6))for the purposes for which they were intended.

§36B-2-117. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed by a declarant under section 2-
2 109(f) or 2-110, ~~or by~~ the association under section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113,
3 ~~or by~~ certain unit owners under section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as
4 limited by ~~subsection~~ subsections (d),(f), (g) and (h), the declaration, including any plats and
5 plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-
6 seven percent of the votes in the association are allocated, ~~or any larger majority unless~~
7 declaration specifies a different percentage for all amendments or for specific subjects of

8 amendment. If the declaration requires the approval of another person as a condition of
9 effectiveness, the amendment is not valid without that approval. The declaration may specify a
10 smaller number only if all of the units are restricted exclusively to nonresidential use.

11 (b) No action to challenge the validity of an amendment adopted by the association
12 pursuant to this section may be brought more than one year after the amendment is recorded.

13 (c) Every amendment to the declaration must be recorded in every county in which any
14 portion of the common interest community is located and is effective only upon recordation. An
15 amendment, except an amendment pursuant to section 2- 112(a), must be indexed in the
16 grantee's index in the name of the common interest community and the association and in the
17 grantor's index in the name of the parties executing the amendment.

18 (d) Except to the extent expressly permitted or required by other provisions of this chapter,
19 no amendment may create or increase special declarant rights, increase the number of units,
20 change the boundaries of any unit, or change the allocated interests of a unit, or the uses to which
21 any unit is restricted, in the absence of unanimous consent of the unit owners.

22 (e) Amendments to the declaration required by this chapter to be recorded by the
23 association must be prepared, executed, recorded, and certified on behalf of the association by
24 any officer of the association designated for that purpose or, in the absence of designation, by
25 the president of the association.

26 (f) An amendment to the declaration may prohibit or materially restrict the permitted uses
27 of or behavior in a unit or the number or other qualifications of persons who may occupy units
28 only by vote or agreement of unit owners of units to which at least eighty percent of the votes in
29 the association are allocated, unless the declaration specifies that a larger percentage of unit
30 owners must vote or agree to that amendment or that the amendment may be approved by unit
31 owners of units having at least eighty percent of the votes of a specified group of units that would

32 be affected by the amendment. An amendment approved under this subsection must provide
33 reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

34 (g) The time limits specified in the declaration pursuant to section 2-105(a)(8) (contents of
35 the declaration) within which reserved development rights must be exercised may be extended,
36 and additional development rights may be created, if persons entitled to cast at least eighty
37 percent of the votes in the association, including eighty percent of the votes allocated to units not
38 owned by the declarant, agree to that action. The agreement is effective thirty days after an
39 amendment to the declaration reflecting the terms of the agreement is recorded unless all the
40 persons holding the affected special declarant rights, or security interests in those rights, record
41 a written objection within the thirty-day period, in which case the amendment is void, or consent
42 in writing at the time the amendment is recorded, in which case, the amendment is effective when
43 recorded.

44 (h) A provision in the declaration creating special declarant rights that have not expired
45 may not be amended without the consent of the declarant.

46 (i) If any provision of this chapter, law, or of the declaration requires the consent of a holder
47 of a security interest in a unit as a condition to the effectiveness of an amendment to the
48 declaration, that consent is deemed granted if a refusal to consent in a record is not received by
49 the association within sixty days after the association delivers notice of the proposed amendment
50 to the holder at an address for notice provided by the holder or mails the notice to the holder by
51 certified mail, return receipt requested, at that address. If the holder has not provided to the
52 association an address for notice, the association shall provide notice to the address in the
53 security interest of record. Notwithstanding this section, an amendment to the declaration that
54 affects the priority of a holder's security interest or the ability of that holder to foreclose its security
55 interest may not be adopted without that holder's consent in a record if the declaration requires

56 that consent as a condition to the effectiveness of the amendment: *Provided*, That this subsection

57 (i) shall not apply to an amendment which:

58 (A) Permits a unit previously restricted to residential occupancy to be used for
59 nonresidential purposes;

60 (B) Increases the share of common expenses allocated to the unit in a manner
61 disproportionate to the formula stated in the declaration pursuant to section one hundred eighteen
62 of this article;

63 (C) Terminates the common interest community pursuant to section one hundred eighteen
64 of this article;

65 (D) Transfers from the association to the unit, the duty to maintain a common element or
66 limited common element previously performed by the association; or

67 (E) The unit owner is contractually precluded from consenting to the amendment by the
68 terms of a planned unit development rider in a recorded security instrument.

69 (j) If the declaration contains a provision requiring that amendments to the declaration may
70 be adopted only by vote or agreement of unit owners of units to which more than eighty percent
71 of the votes in the association are allocated, the amendment is approved:

72 (1) If:

73 (A) Unit owners of units to which at least eighty percent of the votes in the association are
74 allocated vote for or agree to the proposed amendment;

75 (B) No unit owner votes against the proposed amendment; and

76 (C) Notice of the proposed amendment is delivered to the unit owners holding the votes
77 in the association which have not voted or agreed to the proposed amendment and no written
78 objection to the proposed amendment is received by the association within sixty days after the
79 association delivers notice; or

80 (2) Unit owners of units to which at least eighty percent of the votes in the association are
81 allocated vote for or agree to the proposed amendment but at least one unit owner objects to the
82 proposed amendment and, pursuant to an action brought by the association in the circuit court of
83 the county in which the common interest community is situate against all objecting unit owners,
84 the court finds that the objecting unit owners do not have an interest, different in kind from the
85 interests of the other unit owners, that the voting requirement of the declaration was intended to
86 protect.

§36B-2-118. Termination of common interest community.

1 (a) ~~Except in the case of~~ for a taking of all the units by eminent domain, (section 1-107) ~~or~~
2 ~~in the case of~~ foreclosure against an entire cooperative of a security interest that has priority over
3 the declaration, or in the circumstances described in section 2-124, a common interest community
4 may be terminated only by agreement of unit owners of units to which at least eighty percent of
5 the votes in the association are allocated, or any larger percentage the declaration specifies, and
6 with any other approvals required by the declaration. The declaration may specify a smaller
7 percentage only if all of the units are restricted exclusively to nonresidential uses.

8 (b) An agreement to terminate must be evidenced by the execution of a termination
9 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit
10 owners. The termination agreement must specify a date after which the agreement ~~will be~~ is void
11 unless it is recorded before that date. A termination agreement and all ratifications thereof must
12 be recorded in every county in which a portion of the common interest community is situated and
13 is effective only upon recordation.

14 (c) In the case of a condominium or planned community containing only units having
15 horizontal boundaries described in the declaration, a termination agreement may provide that all
16 of the common elements and units of the common interest community must be sold following

17 termination. If, pursuant to the agreement, any real estate in the common interest community is
18 to be sold following terminatino, the termination agreement must set forth the minimum terms of
19 the sale.

20 (d) In the case of a condominium or planned community containing any units not having
21 horizontal boundaries described in the declaration, a termination agreement may provide for sale
22 of the common elements, but it may not require that the units be sold following termination, unless
23 the declaration as originally recorded provided otherwise or all the unit owners consent to the
24 sale.

25 (e) The association, on behalf of the unit owners, may contract for the sale of real estate
26 in a common interest community, but the contract is not binding on the unit owners until approved
27 pursuant to subsections (a) and (b). If any real estate is to be sold following termination, title to
28 that real estate, upon termination, vests in the association as trustee for the holders of all interests
29 in the units. Thereafter, the association has all powers necessary and appropriate to effect the
30 sale. Until the sale has been concluded and the proceeds thereof distributed, the association
31 continues in existence with all powers it had before termination. Proceeds of the sale must be
32 distributed to unit owners and lien holders as their interests may appear, in accordance with
33 subsections (h), (i) and (j). Unless otherwise specified in the termination agreement, as long as
34 the association holds title to the real estate, each unit owner and the unit owner's successors in
35 interest have an exclusive right to occupancy of the portion of the real estate that formerly
36 constituted the unit. During the period of that occupancy, each unit owner and the unit owner's
37 successors in interest remain liable for all the assessments and other obligations imposed on unit
38 owners by this chapter or the declaration.

39 (f) In a condominium or planned community, if the real estate constituting the common
40 interest community is not to be sold following termination, title to the common elements and, in a

41 common interest community containing only units having horizontal boundaries described in the
42 declaration, title to all the real estate in the common interest community, vests in the unit owners
43 upon termination as tenants in common in proportion to their respective interests as provided in
44 subsection (j), and liens on the units shift accordingly. While the tenancy in common exists, each
45 unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the
46 portion of the real estate that formerly constituted the unit.

47 (g) Following termination of the common interest community, the proceeds of ~~any~~ a sale
48 of real estate, together with the assets of the association, are held by the association as trustee
49 for unit owners and holders of liens on the units as their interests may appear.

50 (h) Following termination of a condominium or planned community, creditors of the
51 association holding liens on the units, which were recorded before termination, may enforce those
52 liens in the same manner as any lien holder. All other creditors of the association are to be treated
53 as if they had perfected liens on the units immediately before termination.

54 (i) In a cooperative, the declaration may provide that all creditors of the association have
55 priority over any interests of unit owners and creditors of unit owners. In that event, following
56 termination, creditors of the association holding liens on the cooperative which were recorded
57 before terminatinon may enforce their liens in the same manner as any lien holder, and any other
58 creditor of the association is to be treated as if ~~he~~ the creditor had perfected a lien against the
59 cooperative immediatley before termination. Unless the declaration provides that all creditors of
60 the association have that priority:

61 (1) The lien of each creditor of the association which was perfected against the association
62 before termination becomes, upon termination, a lien against each unit owner's interest in the unit
63 as of the date the lien was perfected;

64 (2) Any other creditor of the association is to be treated upon termination as if the creditor

65 had perfected a lien against each unit owner's interest immediately before termination;

66 (3) The amount of the lien of an association's creditor described in paragraphs (1) and (2)
67 against each of the unit owner's interest must be proportionate to the ratio which each unit's
68 common expense liability bears to the common expense liability of all the units;

69 (4) The lien of each creditor of each unit owners which was perfected before termination
70 continues as a lien against that unit owner's unit as of the date the lien was perfected; ~~and~~

71 (5) The assets of the association must be distributed to all unit owners and all lien holders
72 as their interests may appear in the order described above; and

73 (6) Creditors of the association are not entitled to payment from any unit owner in excess
74 of the amount of the creditor's lien against that unit owner's interest.

75 (j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and
76 (i) are as follows:

77 (1) Except as otherwise provided in paragraph (2), the respective interests of unit owners
78 are the fair market values of their units, allocated interests, and any limited common elements
79 immediately before the termination, as determined by one or more independent appraisers
80 selected by the association. The decision of the independent appraisers must be distributed to
81 the unit owners and becomes final unless disapproved within thirty days after distribution by unit
82 owners of units to which twenty-five percent of the votes in the association are allocated. The
83 proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair
84 market value of that unit owner's unit and its allocated interests by the total fair market values of
85 all the units and their allocated interests.

86 (2) If any unit or any limited common element is destroyed to the extent that an appraisal
87 of the fair market value thereof before destruction cannot be made, the interests of all unit owners
88 are:

89 ~~(i)~~ (A) In a condominium, their respective common element interests immediately before
90 the termination;

91 ~~(ii)~~ (B) In a cooperative, their respective ownership interests immediately before the
92 termination; and

93 ~~(iii)~~ (C) In a planned community, their respective common expense liabilities immediately
94 before the termination.

95 (k) In a condominium or planned community, except as otherwise provided in subsection
96 (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest
97 community does not terminate, of itself, the common interest community, and foreclosure or
98 enforcement of a lien or encumbrance against a portion of the common interest community, other
99 than withdrawable real estate, does not withdraw that portion from the common interest
100 community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real
101 estate, or against common elements that have been subjected to a security interest by the
102 association under section 3-112, does not withdraw, of itself, that real estate from the common
103 interest community, but the person taking title thereto may require from the association, upon
104 request, an amendment excluding the real estate from the common interest community.

105 (l) In a condominium or planned community, if a lien or encumbrance against a portion of
106 the real estate comprising the common interest community has priority over the declaration and
107 the lien or encumbrance has not been partially released, the parties foreclosing the lien or
108 encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to
109 that lien or encumbrance from the common interest community.

§36B-2-119. Rights of secured lenders.

1 (a) The declaration may require that all or a specified number or percentage of the lenders
2 who hold security interests encumbering the units or who have extended credit to the association

3 approve specified actions of the unit owners or the association as a condition to the effectiveness
4 of those actions, but no requirement for approval may operate to: (i) Deny or delegate control over
5 the general administrative affairs of the association by the unit owners or the executive board, or
6 (ii) prevent the association or the executive board from commencing, intervening in, or settling
7 any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving
8 and distributing any insurance proceeds except pursuant to section 3-113.

9 (b) A lender who has extended credit to an association secured by an assignment of
10 income (section 3-102(14)) or an encumbrance on the common elements (section 3-112) may
11 enforce its security agreement in accordance with its terms, subject to the requirements of this
12 chapter and other law. Requirements that the association must deposit its periodic common
13 charges before default with the lender to which the association's income has been assigned, or
14 increase its common charges at the lender's direction by amounts reasonably necessary to
15 amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval
16 contained in subsection (a).

§36B-2-123. Master planned communities.

1 (a) The declaration for a common interest community may state that it is a master planned
2 community if the declarant has reserved the development right to create at least five-hundred
3 units that may be used for residential purposes, and at the time of the reservation that declarant
4 owns or controls more than five-hundred acres on which the units may be built.

5 (b) If the requirements of subsection (a) are satisfied, the declaration for the master
6 planned community need not state a maximum number of units and need not contain any of the
7 information required by section 2-105(a)(3) through (14) until the declaration is amended under
8 subsection (c).

9 (c) When each unit in a master planned community is conveyed to a purchaser, the

10 declaration must contain:

11 (1) A sufficient legal description of the unit and all portions of the master planned
12 community in which any other units have been conveyed to a purchaser; and

13 (2) All the information required by section 2-105(a)(3) through (14) with respect to that real
14 estate.

15 (d) The only real estate in a master planned community subject to this chapter are units
16 that have been declared or which are being offered for sale and any other real estate described
17 pursuant to subsection (c). Other real estate that is or may become part of the master planned
18 community is only subject to other law and to any other restrictions and limitations that appear of
19 record.

20 (e) If the public offering statement conspicuously identifies the fact that the community is
21 a master planned community, the disclosure requirements contained in article four apply only with
22 respect to units that have been declared or are being offered for sale in connection with the public
23 offering statement and to the real estate described pursuant to subsection (c).

24 (f) Limitations in this chapter on the addition of unspecified real estate (section 2-122) do
25 not apply to a master planned community.

26 (g) The period of declarant control of the association for a master planned community
27 terminates in accordance with any conditions specified in the declaration or otherwise at the time
28 the declarant, in a recorded instrument and after giving notice in a record to all the unit owners,
29 voluntarily surrenders all rights to control the activities of the association.

§36B-2-124. Termination following catastrophe.

1 If substantially all the units in a common interest community have been destroyed or are
2 uninhabitable and the available methods for giving notice under section 3-121 of a meeting of unit
3 owners to consider termination under section 2-118 will not likely result in receipt of the notice,

4 the executive board or any other interested person may commence an action in the circuit court
 5 of the county in which the common interest community is situate seeking to terminate the common
 6 interest community. During the pendency of the action, the court may issue whatever orders it
 7 considers appropriate, including appointment of a receiver. After a hearing, the court may
 8 terminate the common interest community or reduce its size and may issue any other order the
 9 court considers to be in the best interest of the unit owners and persons holding an interest in the
 10 common interest community.

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

§36B-3-101. Organization of Unit Owners Association.

1 A unit owners association must be organized no later than the date the first unit in the
 2 common interest community is conveyed. The membership of the association at all times consists
 3 exclusively of all unit owners or, following termination of the common interest community, of all
 4 former unit owners entitled to distributions of proceeds under section 2-118 or their heirs,
 5 successors, or assigns. The association must have an executive board. The association must be
 6 organized as a profit or nonprofit corporation, trust, ~~or~~ limited liability company, partnership, ~~or as~~
 7 ~~an~~ unincorporated association, or any other form of organization authorized by the law of this
 8 state.

§36B-3-102. Powers and duties of unit owners association.

1 (a) Except as otherwise provided in subsection (b) and ~~subject to the~~ other provisions of
 2 ~~the declaration this chapter,~~ the association ~~even if unincorporated, even if not registered:~~ may
 3 (1) Shall adopt and may amend bylaws and may adopt and amend rules; ~~and regulations~~
 4 (2) Shall adopt and may amend budgets ~~for revenues, expenditures, and reserves under~~
 5 section 3-123, shall ~~and~~ collect assessments for common expenses from unit owners, and may
 6 invest funds of the association;

7 (3) May hire and discharge managing agents and other employees, agents, and
8 independent contractors;

9 (4) May institute, defend, or intervene in litigation or in arbitration, mediation, or
10 administrative proceedings in its own name on behalf of itself or two or more unit owners on
11 matters affecting the common interest community, subject to section 3-124;

12 (5) May make contracts and incur liabilities;

13 (6) May regulate the use, maintenance, repair, replacement, and modification of common
14 elements;

15 (7) May cause additional improvements to be made as a part of the common elements;

16 (8) May acquire, hold, encumber, and convey in its own name any right, title, or interest to
17 real estate or personal property, but:

18 ~~(i)(A)~~ Common elements in a condominium or planned community may be conveyed or
19 subjected to a security interest only pursuant to section 3-112 ~~section one hundred twelve of this~~
20 ~~article~~; and

21 ~~(ii)(B)~~ Part of a cooperative may be conveyed, or all or part of a cooperative may be
22 subjected to a security interest, only pursuant to section 3-112; ~~section one hundred twelve of this~~
23 ~~article~~

24 (9) May grant easements, leases, licenses, and concessions through or over the common
25 elements;

26 (10) May impose and receive any payments, fees, or charges for:

27 (A) The use, rental, or operation of the common elements, other than limited common
28 elements described in section 2-102(2) and (4); ~~subsections (1) and (4), section one hundred two,~~
29 ~~article two of this chapter,~~ and

30 (B) ~~for~~ Services provided to unit owners;

31 (11) May impose charges for late payment of assessments and, after notice and an
32 opportunity to be heard, ~~may levy~~ impose reasonable fines for violations of the declaration,
33 bylaws, and rules ~~and regulations~~ of the association;

34 (12) May impose reasonable charges for the preparation and recordation of amendments
35 to the declaration, resale certificates required by section one hundred nine, article four of this
36 chapter, or statements of unpaid assessments;

37 (13) May provide for the indemnification of its officers and executive board and maintain
38 directors' and officers' liability insurance;

39 (14) May assign its right to future income, including the right to receive common expense
40 assessments, but only to the extent the declaration expressly so provides;

41 (15) May exercise any other powers conferred by the declaration or bylaws;

42 (16) May exercise all other powers that may be exercised in this state by legal entities of
43 the same type as the association;

44 ~~(17) Institute litigation or administrative proceedings in its own name against a unit owner
45 for the collection of dues or assessments that are overdue or in arrears; and~~

46 ~~(17)~~ (17) May exercise any other powers necessary and proper for the governance and
47 operation of the association;

48 (18) May require that disputes between the association and unit owners or between two
49 or more unit owners regarding the common interest community be submitted to nonbinding
50 alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;

51 (19) May suspend any right or privilege of a unit owner that fails to pay an assessment,
52 but may not:

53 (A) Deny a unit owner or other occupant access to the owner's unit; or

54 (B) Withhold services provided to a unit or a unit owner by the association if the effect of

55 withholding the service would be to endanger the health, safety, or property of any person; and

56 (20) The association may, after notice, suspend a unit owner's right to vote and/or right to
57 seek election as a director or officer of the association for failure of the unit owner to pay
58 assessments. The suspended rights to vote or seek election shall be immediately restored to the
59 unit owner upon payment of all past due or delinquent assessments even if paid during a meeting
60 or election.

61 (b) The declaration may not ~~impose limitations on~~ limit the power of the association beyond
62 the limitations authorized in subsection(a)(18) to:

63 (1) Deal with the declarant ~~which are~~ if the limit is more restrictive than the ~~limitations~~ limit
64 imposed on the power of the association to deal with other persons; or

65 (2) Institute litigation or an arbitration, mediation or administrative proceeding against any
66 person, subject to the following:

67 (A) The association shall comply with section 124 of this article, if applicable, before
68 instituting any proceeding described in subsection (a) of said section in connection with
69 construction defects; and

70 (B) The executive board promptly shall provide notice to the unit owners of any legal
71 proceeding in which the association is a party other than proceedings involving enforcement of
72 rules or to recover unpaid assessments or other sums due the association.

73 (c) If a tenant of a unit owner violates the declaration, bylaws, or rules of the association,
74 in addition to exercising any of its powers against the unit owner, the association may:

75 (1) Exercise directly against the tenant the powers described in subsection (a)(11);

76 (2) After giving notice to the tenant and the unit owner and an opportunity to be heard,
77 levy reasonable fines against the tenant for the violation; and

78 (3) Enforce any other rights against the tenant for the violation which the unit owner as

79 landlord could lawfully have exercised under the lease or which the association could lawfully
80 have exercised directly against the unit owner, or both.

81 (d) The rights referred to in subsection (c)(3) may be exercised only if the tenant or unit
82 owner fails to cure the violation within ten days after the association notifies the tenant and unit
83 owner of that violation.

84 (e) Unless a lease otherwise provides, this section does not:

85 (1) Affect rights that the unit owner has to enforce the lease or that the association has
86 under other law; or

87 (2) Permit the association to enforce a lease to which it is not a party in the absence of a
88 violation of the declaration, bylaws, or rules.

89 (f) The executive board may determine whether to take enforcement action by exercising
90 the association's power to impose sanctions or commencing an action for a violation of the
91 declaration, bylaws, and rules, including whether to compromise any claim for unpaid
92 assessments or other claim made by or against it. The executive board does not have a duty to
93 take enforcement action if it determines that, under the facts and circumstances presented:

94 (1) The association's legal position does not justify taking any or further enforcement
95 action;

96 (2) The covenant, restriction, or rule being enforced is, or is likely to be construed as,
97 inconsistent with law;

98 (3) Although a violation may exist or may have occurred, it is not so material as to be
99 objectionable to a reasonable person or to justify expending the association's resources; or

100 (4) It is not in the association's best financial or other interests to pursue an enforcement
101 action.

102 (g) The executive board's decision under subsection (f) not to pursue enforcement under

103 one set of circumstances does not prevent the executive board from taking enforcement action
 104 under another set of circumstances, but the executive board may not be arbitrary or capricious in
 105 taking enforcement action.

106 (h) The executive board shall establish a reasonable method for unit owners to
 107 communicate among themselves and with the executive board on matters concerning the
 108 association.

§36B-3-103. Executive board members and officers.

1 (a) Except as otherwise provided in the declaration, the bylaws, subsection (b), or other
 2 provisions of this chapter, the executive board ~~may act in all instances~~ acts on behalf of the
 3 association. In the performance of their duties, the officers and members of the executive board
 4 ~~are required to exercise (i) if appointed by the declarant the care required of fiduciaries of the unit~~
 5 ~~owners shall exercise the degree of care and loyalty to the association required of a trustee. and~~
 6 ~~(ii) if elected by the unit owners, ordinary and reasonable care. Officers and members of the~~
 7 executive board not appointed by the declarant shall exercise the degree of care and loyalty to
 8 the association required of an officer or director of a corporation and are subject to the conflict of
 9 interest rules governing directors and officers, under West Virginia Code Chapter 31E. The
 10 standards of care and loyalty described in this section apply regardless of the form in which the
 11 association is organized.

12 (b) The executive board may not: ~~act on behalf of the association:~~

13 (1) to Amend the declaration except as provided in (section 2-117);

14 (2) to Terminate the common interest community (section 2-118);

15 (3) to Elect members of the executive board but may fill vacancies in its membership
 16 for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of
 17 executive board members; or

18 (4) Determine the qualifications, powers, ~~and~~ duties, or terms of office of executive board
19 members (section 3-103(f)), ~~but the executive board may fill vacancies in its membership for the~~
20 ~~unexpired portion of any term.~~

21 (c) The executive board shall adopt budgets as provided in section 3-123. ~~Within thirty~~
22 ~~days after adoption of any proposed budget for the common interest community, the executive~~
23 ~~board shall provide a summary of the budget to all the unit owners, and shall set a date for a~~
24 ~~meeting of the unit owners to consider ratification of the budget not less than fourteen nor more~~
25 ~~than thirty days after mailing of the summary. Unless at that meeting a majority of all unit owners~~
26 ~~or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or~~
27 ~~not a quorum is present. In the event the proposed budget is rejected, the periodic budget last~~
28 ~~ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent~~
29 ~~budget proposed by the executive board.~~

30 (d) Subject to subsection (e), the declaration may provide for a period of declarant control
31 of the association, during which a declarant, or persons designated by him the declarant may
32 appoint and remove the officers and members of the executive board. A declarant may voluntarily
33 surrender the right to appoint and remove officers and members of the executive board before
34 the period ends. In that event, the declarant may require during the remainder of the period that
35 specified actions of the association or executive board, as described in a recorded instrument
36 executed by the declarant, be approved by the declarant before they become effective.
37 Regardless of the period provided in the declaration, and except as provided in section 2-123(g)
38 (master planned communities), a period of declarant control terminates no later than the ~~earlier~~
39 earliest of:

40 (i) Sixty days after conveyance of ~~seventy-five percent~~ three fourths of the units that may
41 be created to unit owners other than a declarant;

42 (ii) Two years after all declarants have ceased to offer units for sale in the ordinary course
43 of business;

44 (iii) Two years after any right to add new units was last exercised; or

45 (iv) The day the declarant, after giving notice in a record to unit owners, records an
46 instrument voluntarily surrendering all rights to control activities of the association. A declarant
47 may voluntarily surrender the right to appoint and remove officers and members of the executive
48 board before termination of that period, but in that event the declarant may require, for the duration
49 of the period of declarant control, that specified actions of the association or executive board, as
50 described in a recorded instrument executed by the declarant, be approved by the declarant
51 before they become effective.

52 (e) Not later than sixty days after conveyance of ~~twenty-five percent~~ one fourth of the units
53 that may be created to unit owners other than a declarant, at least one member and not less than
54 twenty-five percent of the members of the executive board must be elected by unit owners other
55 than the declarant. Not later than sixty days after conveyance of ~~fifty percent~~ one half of the units
56 that may be created to unit owners other than a declarant, not less than ~~thirty-three and one-third~~
57 ~~percent~~ one third of the members of the executive board must be elected by unit owners other
58 than the declarant.

59 (f) Except as otherwise provided in section 2-120(e), not later than the termination of any
60 period of declarant control, the unit owners shall elect an executive board of at least three
61 members, at least a majority of whom must be unit owners. Unless the declaration provides for
62 the election of officers by the unit owners, the ~~The~~ executive board shall elect the officers. The
63 executive board members and officers shall take office upon election or appointment.

64 (g) ~~Notwithstanding any provision of the declaration or bylaws to the contrary, the unit~~
65 ~~owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit~~

66 ~~owners at which a quorum is present, may remove any member of the executive board with or~~
67 ~~without cause, other than a member appointed by the declarant. A declaration may provide for~~
68 ~~the appointment of specified positions on the executive board by persons other than the declarant~~
69 ~~during or after the period of declarant control. It also may provide a method for filling vacancies~~
70 ~~in those positions, other than by election by unit owners. However, after the period of declarant~~
71 ~~control, appointed members:~~

72 (1) May not comprise more than one third of the board; and

73 (2) Have no greater authority than any other member of the board.

74 (h) Within thirty days after unit owners other than the declarant elect a majority of the
75 members of the executive board, the declarant shall deliver to the association all property of the
76 unit owners and of the association held by or controlled by the declarant, including without
77 limitation the following items:

78 (1) The original or a certified copy of the recorded declaration as amended; the association
79 articles of incorporation, if the association is incorporated; bylaws; minute books and other books
80 and records of the association; and any rules which may have been promulgated;

81 (2) An accounting for association funds and financial statements, from the date the
82 association received funds and ending on the date the period of declarant control ends. The
83 financial statements shall be audited by an independent certified public accountant and shall be
84 accompanied by the accountant's letter, expressing either:

85 (A) The opinion that the financial statements present fairly the financial position of the
86 association in conformity with generally accepted accounting principles; or

87 (B) A disclaimer of the accountant's ability to attest to the fairness of the presentation of
88 the financial information in conformity with generally accepted accounting principles, and the
89 reasons therefor. The expense of the audit shall not be paid for or charged to the association;

90 (3) Association funds or control thereof;

91 (4) All insurance policies then in force, in which the association or its directors and officers
 92 are named as insured persons;

93 (5) A roster of unit owners and mortgagees and their addresses and telephone numbers,
 94 if known, as shown on the declarant's records; and

95 (6) Contracts in which the association is a contracting party.

96 (i) During the period of declarant control, the declarant shall, at least every six months, provide
 97 the unit owners with a current financial statement of the association. The statement shall be on a
 98 cash basis and need not be audited by an independent accountant. It shall include, without
 99 limitation:

100 (1) All income and expenses for the calendar year to date;

101 (2) All accounts payable and receivable, including the ages of those accounts and showing
 102 all sums due to and from the declarant and affiliates of the declarant;

103 (3) The amount of any funded replacement reserves; and

104 (4) The balance of any other funds of the association.

§36B-3-105. Termination of contracts and leases of declarant.

1 (a) ~~If entered into before~~ Within two years after the executive board elected by the unit

2 owners pursuant to section 3-103(f) takes office, the association may terminate without penalty,

3 upon not less than ninety days' notice to the other party, any of the following if it was entered into

4 before the executive board was elected:

5 ~~(i)~~ (1) Any management, maintenance, operations, or ~~contract,~~ employment contract, or

6 lease of recreational or parking areas or facilities; ~~or~~

7 ~~(ii)~~ (2) Any other contract or lease between the association and a declarant or an affiliate

8 of a declarant. ~~or~~

9 ~~(iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at~~
10 ~~the time entered into under the circumstances then prevailing, may be terminated~~

11 (b) The association may terminate without penalty ~~by the association~~ at any time after the
12 executive board elected by the unit owners pursuant to section 3-103(f) takes office upon not less
13 than ninety days' notice to the other party, any contract or lease that is not bona fide or was
14 unconscionable to the unit owners at the time entered into.

15 (c) This section does not apply to:

16 ~~(i)~~ (1) Any lease the termination of which would terminate the common interest community
17 or reduce its size, unless the real estate subject to that lease was included in the common interest
18 community for the purpose of avoiding the right of the association to terminate a lease under this
19 section; or

20 ~~(ii)~~ (2) A proprietary lease.

§36B-3-106. Bylaws.

1 (a) The bylaws of the association must: ~~provide~~

2 (1) Provide the number of members of the executive board and the titles of the officers of
3 the association;

4 (2) Provide for election by the executive board, or if the declaration requires, by unit
5 owners, of president, treasurer, secretary, and any other officers of the association the bylaws
6 specify;

7 (3) Specify the qualifications, powers and duties, terms of office, and manner of electing
8 and removing executive board members and officers and filling vacancies;

9 (4) Specify the ~~Which, if any, of its~~ powers the executive board or officers may delegate
10 to other persons or to a managing agent;

11 (5) Specify the ~~Which of its~~ officers who may prepare, execute, certify, and record

12 amendments to the declaration on behalf of the association; and

13 (6) Specify a method for amending the bylaws;

14 (7) Contain any provision necessary to satisfy requirements in this chapter or the
15 declaration concerning meetings, voting, quorums, and other activities of the association; and

16 (8) Provide for any matter required by law of this state other than this chapter to appear in
17 the bylaws of organizations of the same type as the association.

18 (b) Subject to ~~the provisions of~~ the declaration and this chapter, the bylaws may provide
19 for any other necessary or appropriate matters, ~~the association deems necessary and~~
20 ~~appropriate,~~ including matters that could be adopted as rules.

§36B-3-108. Meetings.

1 ~~A meeting of the association must be held at least once each year. Special meetings of~~
2 ~~the association may be called by the president,~~

3 (a) The following requirements apply to unit owner meetings:

4 (1) An association shall hold a meeting of unit owners annually at a time, date, and place
5 stated in or fixed in accordance with the bylaws.

6 (2) An association shall hold a special meeting of unit owners to address any matter
7 affecting the common interest community or the association if its president, a majority of the
8 executive board, or by unit owners having at least twenty percent, or any lower percentage
9 specified in the bylaws, of the votes in the association request that the secretary call the meeting.

10 ~~Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer~~
11 ~~specified in the bylaws shall cause notice to be hand-delivered or sent prepaid~~ If the association
12 does not notify unit owners of a special meeting within thirty days after the requisite number or
13 percentage of unit owners request the secretary to do so, the requesting members may directly
14 notify all the unit owners of the meeting. Only matters described in the meeting notice required by

15 paragraph (3) may be considered at a special meeting.

16 (3) An association shall notify unit owners of the time, date, and place of each annual and
17 special unit owners meeting not less than ten days or more than sixty days before the meeting
18 date. Notice may be by any means described in section 3-121 by United States mail to the mailing
19 address of each unit or to any other mailing address designated in writing by the unit owner. The
20 notice of any meeting must state the time, date and place of the meeting and the items on the
21 agenda, including:

22 (A) A statement of the general nature of any proposed amendment to the declaration or
23 bylaws;

24 (B) Any budget changes; and

25 (C) Any proposal to remove an officer or member of the executive board.

26 (4) The minimum time to give notice required by paragraph (3) may be reduced or waived
27 for a meeting called to deal with an emergency.

28 (5) Unit owners must be given a reasonable opportunity at any meeting to comment
29 regarding any matter affecting the common interest community or the association.

30 (6) The declaration or bylaws may allow for meetings of unit owners to be conducted by
31 telephonic, video, or other conferencing process, if the alternative process is consistent with
32 subsection (b)(7).

33 (b) The following requirements apply to meetings of the executive board and committees
34 of the association authorized to act for the association:

35 (1) Meetings must be open to the unit owners except during executive sessions. The
36 executive board and those committees may hold an executive session only during a regular or
37 special meeting of the board or a committee. No final vote or action may be taken during an
38 executive session. An executive session may be held only to:

39 (A) Consult with the association's attorney concerning legal matters;

40 (B) Discuss existing or potential litigation or mediation, arbitration, or administrative
41 proceedings;

42 (C) Discuss labor or personnel matters;

43 (D) Discuss contracts, leases, and other commercial transactions to purchase or provide
44 goods or services currently being negotiated, including the review of bids or proposals, if
45 premature general knowledge of those matters would place the association at a disadvantage; or

46 (E) Prevent public knowledge of the matter to be discussed if the executive board or
47 committee determines that public knowledge would violate the privacy of any person.

48 (2) For purposes of this section, a gathering of board members at which the board
49 members do not conduct association business is not a meeting of the executive board. The
50 executive board and its members may not use incidental or social gatherings of board members
51 or any other method to evade the open meeting requirements of this section.

52 (3) During the period of declarant control, the executive board shall meet at least four
53 times a year. Up until the sale of the 12th unit, at least two of those meetings must be held at the
54 common interest community or at a place convenient to the community. Upon the sale of the 12th
55 unit, all meetings must be held at the common interest community or at a place convenient to
56 the community. After termination of the period of declarant control, all executive board meetings
57 must be at the common interest community or at a place convenient to the community unless the
58 unit owners amend the bylaws to vary the location of those meetings.

59 (4) At each executive board meeting, the executive board shall provide a reasonable
60 opportunity for unit owners to comment regarding any matter affecting the common interest
61 community and the association.

62 (5) Unless the meeting is included in a schedule given to the unit owners or the meeting

63 is called to deal with an emergency, the secretary or other officer specified in the bylaws shall
64 give notice of each executive board meeting to each board member and to the unit owners. The
65 notice must be given at least ten days before the meeting and must state the time, date, place,
66 and agenda of the meeting.

67 (6) If any materials are distributed to the executive board before the meeting, the executive
68 board at the same time shall make copies of those materials reasonably available to unit owners,
69 except that the board need not make available copies of unapproved minutes or materials that
70 are to be considered in executive session.

71 (7) Unless the declaration or bylaws otherwise provide, the executive board may meet by
72 telephonic, video, or other conferencing process if:

73 (A) The meeting notice states the conferencing process to be used and provides
74 information explaining how unit owners may participate in the conference directly or by meeting
75 at a central location or conference connection; and

76 (B) The process provides all unit owners the opportunity to hear or perceive the discussion
77 and to comment as provided in paragraph (4).

78 (8) After termination of the period of declarant control, unit owners may amend the bylaws
79 to vary the procedures for meetings described in paragraph (7).

80 (9) Instead of meeting, the executive board may act by unanimous consent as
81 documented in a record authenticated by all its members. The secretary promptly shall give
82 notice to all unit owners of any action taken by unanimous consent. After termination of the period
83 of declarant control, the executive board may act by unanimous consent only to undertake
84 ministerial actions or to implement actions previously taken at a meeting of the executive board.

85 (10) Even if an action by the executive board is not in compliance with this section, it is
86 valid unless set aside by a court. A challenge to the validity of an action of the executive board

87 for failure to comply with this section may not be brought more than sixty days after the minutes
88 of the executive board of the meeting at which the action was taken are approved or the record
89 of that action is distributed to unit owners, whichever is later.

§36B-3-109. Quorum.

1 (a) Unless the bylaws otherwise provide ~~otherwise~~, a quorum is present throughout any
2 meeting of the ~~association~~ unit owners if persons entitled to cast twenty percent of the votes ~~that~~
3 ~~may be cast for election of the executive board~~ in the association:

- 4 (1) Are present in person or by proxy at the beginning of the meeting;
5 (2) Have cast absentee ballots solicited in accordance with section 3-110 (c)(4) which
6 have been delivered to the secretary in a timely manner; or
7 (3) Are present by any combination of paragraphs (1) and (2).

8 (b) Unless the bylaws specify a larger ~~percentage~~ number, a quorum of the executive
9 board is deemed present for purposes of determining the validity of any action throughout any
10 taken at a meeting of the executive board only if individuals ~~persons~~ entitled to cast ~~fifty percent~~
11 a majority of the votes on that board are present at the time a vote regarding that action is taken.
12 at the beginning of the meeting. If a quorum is present when a vote is taken, the affirmative vote
13 of a majority of the board members present is the act of the executive board unless a greater vote
14 is required by the declaration or bylaws.

§36B-3-110. Voting; proxies; ballots.

1 (a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a
2 meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to
3 subsection (c) or, when a vote is conducted without a meeting, by electronic or paper ballot
4 pursuant to subsection (d).

5 (b) At a meeting of unit owners the following requirements apply:

6 (1) Unit owners who are present in person may vote by voice vote, show of hands,
7 standing, or any other method for determining the votes of unit owners, as designated by the
8 person presiding at the meeting.

9 (2) If only one of several owners of a unit is present, that owner is entitled to cast all the
10 votes allocated to that unit. If more than one of the owners are present, the votes allocated to the
11 unit may be cast only in accordance with the agreement of a majority in interest of the owners,
12 unless the declaration expressly provides otherwise. There is majority agreement if any one of
13 the owners casts the votes allocated to the unit without protest being made promptly to the person
14 presiding over the meeting by any of the other owners of the unit.

15 (3) Unless a greater number or fraction of the votes in the association is required by this
16 chapter or the declaration, a majority of the votes cast determines the outcome of any action of
17 the association.

18 (4) Subject to subsection (a), a unit owner may vote by absentee ballot without being
19 present at the meeting. The association promptly shall deliver an absentee ballot to an owner
20 that requests it if the request is made at least three days before the scheduled meeting. Votes
21 cast by absentee ballot must be included in the tally of a vote taken at that meeting.

22 (5) When a unit owner votes by absentee ballot, the association must be able to verify that
23 the ballot is cast by the unit owner having the right to do so.

24 (c) Except as otherwise provided in the declaration or bylaws, the following requirements
25 apply with respect to proxy voting:

26 (1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly
27 executed by a unit owner.

28 (2) If a unit is owned by more than one person, each owner of the unit may vote or register
29 protest to the casting of votes by the other owners of the unit through a duly executed proxy.

30 (3) A unit owner may revoke a proxy given pursuant to this section only by actual notice
31 of revocation to the person presiding over a meeting of the association.

32 (4) A proxy is void if it is not dated or purports to be revocable without notice.

33 (5) A proxy is valid only for the meeting at which it is cast and any recessed session of
34 that meeting.

35 (6) A person may not cast undirected proxies representing more than fifteen percent of
36 the votes in the association, unless the undirected proxies are for units under common ownership.

37 (d) Unless prohibited or limited by the declaration or bylaws, an association may conduct
38 a vote without a meeting. In that event, the following requirements apply:

39 (1) The association shall notify the unit owners that the vote will be taken by ballot.

40 (2) The association shall deliver a paper or electronic ballot to every unit owner entitled to
41 vote on the matter.

42 (3) The ballot must set forth each proposed action and provide an opportunity to vote for
43 or against the action.

44 (4) When the association delivers the ballots, it shall also:

45 (A) Indicate the number of responses needed to meet the quorum requirements;

46 (B) State the percent of votes necessary to approve each matter other than election of
47 directors;

48 (C) Specify the time and date by which a ballot must be delivered to the association to be
49 counted, which time and date may not be fewer than three days after the date the association
50 delivers the ballot; and

51 (D) Describe the time, date, and manner by which unit owners wishing to deliver
52 information to all unit owners regarding the subject of the vote may do so.

53 (5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after

54 delivery to the association by death or disability or attempted revocation by the person that case
55 that vote.

56 (6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast
57 by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

58 (e) If the declaration requires that votes on specified matters affecting the common interest
59 community be cast by lessees rather than unit owners of leased units:

60 (1) This section applies to lessees as if they were unit owners.

61 (2) Unit owners that have leased their units to other persons may not cast votes on those
62 specified matters; and

63 (3) Lessees are entitled to notice of meetings, access to records, and other rights
64 respecting these matters as if they were unit owners.

65 (f) Unit owners must also be given notice of all meetings at which lessees are entitled to
66 vote.

67 (g) Votes allocated to a unit owned by the association must be cast in any vote of the unit
68 owners in the same proportion as the votes cast on the matter by unit owners other than the
69 association.

§36B-3-111. Tort and contract liability; tolling of limitation period.

1 (a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage
2 out of the condition or use of the common elements. Neither the association nor any unit owner
3 except the declarant is liable for that declarant's torts in connection with any part of the common
4 interest community which that declarant has the responsibility to maintain.

5 (b) An action alleging a wrong done by the association, including an action arising out of
6 the condition or use of the common elements, may be maintained only against the association
7 and not against any unit owner. If the wrong occurred during any period of declarant control and

8 the association gives the declarant reasonable notice of and an opportunity to defend against the
9 action, the declarant who then controlled the association is liable to the association or to any unit
10 owner for all tort losses not covered by insurance suffered by the association or that unit owner,
11 and all costs that the association would not have incurred but for a breach of contract or other
12 wrongful act or omission. Whenever the declarant is liable to the association under this section,
13 the declarant is also liable for all expenses of litigation, including reasonable attorney's fees,
14 incurred by the association.

15 (c) Except as provided in section 4-116(d) with respect to warranty claims, any statute of
16 limitation affecting the association's right of action against a declarant under this chapter is tolled
17 until the period of declarant control terminates. A unit owner is not precluded from maintaining
18 an action contemplated by this section because he or she is a unit owner or a member or officer
19 of the association. Liens resulting from judgments against the association are governed by
20 section 3-117.

§36B-3-112. Conveyance or encumbrance of common elements.

1 (a) In a condominium or planned community, portions of the common elements may be
2 conveyed or subjected to a security interest by the association if persons entitled to cast at least
3 eighty percent of the votes in the association, including eighty percent of the votes allocated to
4 units not owned by a declarant, or any larger percentage the declaration specifies, agree to that
5 action; but all owners of units to which any limited common element is allocated must agree in
6 order to convey that limited common element or subject it to a security interest. The declaration
7 may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential
8 uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited
9 common elements must be distributed equitably among the owners of units to which the limited
10 common elements were allocated.

11 (b) Part of a cooperative may be conveyed and all or part of a cooperative may be
12 subjected to a security interest by the association if persons entitled to cast at least eighty percent
13 of the votes in the association, including eighty percent of the votes allocated to units not owned
14 by a declarant, or any larger percentage the declaration specified, agree to that action; but, if
15 fewer than all of the units or limited common elements are to be conveyed or subjected to a
16 security interest, then all unit owners of those units, or the units to which those limited common
17 elements are allocated, must agree in order to convey those units or limited common elements or
18 subject them to a security interest. The declaration may specify a smaller percentage only if all
19 of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset
20 of the association. Any purported conveyance or other voluntary transfer of an entire cooperative,
21 unless made pursuant to section 2-118, is void.

22 (c) An agreement to convey common elements in a condominium or planned community,
23 or to subject them to a security interest, or in a cooperative, an agreement to convey any part of
24 a cooperative or subject it to a security interest, must be evidenced by the execution of an
25 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit
26 owners. The agreement must specify a date after which the agreement will be void unless
27 recorded before that date. The agreement and all ratifications thereof must be recorded in every
28 county in which a portion of the common interest community is situate, and is effective only upon
29 recordation.

30 (d) The association, on behalf of the unit owners, may contract to convey an interest in a
31 common interest community pursuant to subsection (a), but the contract is not enforceable
32 against the association until approved pursuant to subsections (a), (b), and (c). Thereafter, the
33 association has all powers necessary and appropriate to effect the conveyance or encumbrance,
34 including the power to execute deeds or other instruments.

35 (e) Unless made pursuant to this section, any purported conveyance, encumbrance,
36 judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative
37 is void.

38 (f) A conveyance or encumbrance of common elements or of a cooperative pursuant to
39 this section does not deprive any unit of its rights of access and support.

40 (g) Unless the declaration otherwise provides, ~~a conveyance or encumbrance of common~~
41 ~~elements pursuant to this section does not affect the priority or validity of preexisting~~
42 ~~encumbrances~~ if the holders of first security interests on eighty percent of the units that are subject
43 to security interests on the day the unit owners' agreement under subsection (c) is recorded:

44 (1) A conveyance of common elements pursuant to this section terminates both the
45 undivided interests in those common elements allocated to the units and the security interests in
46 those undivided interests held by all persons holding security interests in the units; and

47 (2)An encumbrance of common elements pursuant to this section has priority over all
48 preexisting encumbrances on the undivided interests in those common elements held by all
49 persons holding security interests in the units.

50 (h) The consents by holders of first security interests on units described in subsection (g),
51 or a certificate of the secretary affirming that those consents have been received by the
52 association, may be recorded at any time before the date on which the agreement under
53 subsection (c) becomes void. Consents or certificates so recorded are valid from the date they
54 are recorded for purposes of calculating the percentage of consenting first security interest
55 holders, regardless of later sales or encumbrances on those units. Even if the required
56 percentage of first security interest holders so consent, a conveyance or encumbrance of common
57 elements does not affect interests having priority over the declaration, or created by the
58 association after the declaration was recorded.

59 (i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary
60 lease without complying with this section.

§36B-3-113. Insurance.

1 (a) Commencing not later than the time of the first conveyance of a unit to a person other
2 than a declarant, the association shall maintain, to the extent reasonably available and subject to
3 reasonable deductibles:

4 (1) Property insurance on the common elements and, in a planned community, also on
5 property that must become common elements, insuring against ~~all~~ risks of direct physical loss
6 commonly insured against ~~or, in the case of a conversion building, against fire and extended~~
7 ~~coverage perils. The total amount of~~ which insurance, after application of any deductibles, must
8 be not less than eighty percent of the actual cash value of the insured property at the time the
9 insurance is purchased and at each renewal date, exclusive of land, excavations, foundations,
10 and other items normally excluded from property policies; ~~and~~

11 (2) Commercial general liability insurance, including medical payments insurance, in an
12 amount determined by the executive board but not less than any amount specified in the
13 declaration, covering all occurrences commonly insured against ~~for death, bodily injury, and~~
14 property damage arising out of or in connection with the use, ownership, or maintenance of the
15 common elements and, in cooperatives, also of all units; and

16 (3) Fidelity insurance.

17 (b) In the case of a building ~~that is part of a cooperative or~~ that contains units ~~having~~
18 divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise
19 common walls between units, the insurance maintained under subsection (a)(1), to the extent
20 reasonably available, must include the units, but need not include improvements and betterments
21 installed by unit owners.

22 (c) If the insurance described in subsections (a) and (b) is not reasonably available, the
23 association promptly shall cause notice of that fact to be ~~hand-delivered or sent prepaid by United~~
24 ~~States mail~~ given to all unit owners. The declaration may require the association to carry any
25 other insurance, and the association ~~in any event~~ may carry any other insurance it considers
26 appropriate to protect the association or the unit owners.

27 (d) Insurance policies carried pursuant to subsections (a) and (b) must provide that:

28 (1) Each unit owner is an insured person under the policy with respect to liability arising
29 out of ~~his~~ the owner's interest in the common elements or membership in the association;

30 (2) The insurer waives its right to subrogation under the policy against any unit owner or
31 member of ~~his~~ the owner's household;

32 (3) No act or omission by ~~any~~ a unit owner, unless acting within the scope of ~~his~~ the
33 owner's scope of his authority on behalf of the association, ~~will~~ voids the policy or ~~be~~ is a condition
34 to recovery under the policy; and

35 (4) If, at the time of a loss under the policy, there is other insurance in the name of a unit
36 owner covering the same risk covered by the policy, the association's policy provides primary
37 insurance.

38 (e) Any loss covered by the property policy under subsections (a)(1) and (b) must be
39 adjusted with the association, but the insurance proceeds for that loss are payable to any
40 insurance trustee designated for that purpose, or otherwise to the association, and not to any
41 holder of a security interest. The insurance trustee or the association shall hold any insurance
42 proceeds in trust for the association, unit owners, and lien holders as their interests may appear.
43 Subject to ~~the provisions of~~ subsection (h), the proceeds must be disbursed first for the repair or
44 ~~restoration~~ replacement of the damaged property, and the association, unit owners, and lien
45 holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus

46 of proceeds after the property has been completely repaired or ~~restored~~ replaced, or the common
47 interest community is terminated.

48 (f) An insurance policy issued to the association does not prevent a unit owner from
49 obtaining insurance for his the owner's own benefit.

50 (g) An insurer that has issued an insurance policy under this section shall issue certificates
51 or memoranda of insurance to the association and, upon ~~written~~ request made in a record, to any
52 unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse
53 to renew it until ~~30~~ thirty days after notice of the proposed cancellation or nonrenewal has been
54 mailed to the association, each unit owner and each holder of a security interest to whom a
55 certificate or memorandum of insurance has been issued at their respective last known
56 addresses.

57 (h) Any portion of the common interest community for which insurance is required under
58 this section which is damaged or destroyed must be repaired or replaced promptly by the
59 association unless:

60 (i) (1) The common interest community is terminated, in which case section 2-118 applies;

61 (ii) (2) Repair or replacement would be illegal; ~~under any state or local statute or ordinance~~
62 ~~governing health or safety~~, or

63 (iii) (3) Eighty percent of the unit owners, including every owner of a unit or assigned limited
64 common element that will not be rebuilt, vote not to rebuild.

65 (i) The cost of repair or replacement in excess of insurance proceeds, deductibles, and
66 reserves is a common expense. If the entire common interest community is not repaired or
67 replaced:

68 (i) (1) The insurance proceeds attributable to the damaged common elements must be
69 used to restore the damaged area to a condition compatible with the remainder of the common

70 interest community; and

71 ~~(ii)~~(2) Except to the extent that other persons will be distributees (section 2-105(a)(12)(ii)):

72 (A) The insurance proceeds attributable to units and limited common elements that are
73 not ~~rebuild~~ repaired or replaced must be distributed to the owners of those units and the owners
74 of the units to which those limited common elements were allocated, or to lien holders, as their
75 interests may appear; and

76 (B) The remainder of the proceeds must be distributed to all the unit owners or lien holders,
77 as their interests may appear, as follows:

78 ~~(4)~~(i) In a condominium, in proportion to the common element interests of all the units; and

79 ~~(2)~~(ii) In a cooperative or planned community, in proportion to the common expense
80 liabilities of all the units.

81 (i) If the unit owners vote not to rebuild any unit, that unit's allocated interests are
82 automatically reallocated upon the vote as if the unit had been condemned under section 1-
83 107(a), and the association promptly shall prepare, execute, and record an amendment to the
84 declaration reflecting the reallocations.

85 ~~(i)~~ (k) ~~The provisions of~~ This section may be varied or waived in the case of a common
86 interest community all of whose units are restricted to nonresidential use.

§36B-3-114. Surplus Funds.

1 Unless otherwise provided in the declaration, any surplus funds of the association
2 remaining after payment of or provision for common expenses and any prepayment of reserves
3 must be paid annually to the unit owners in proportion to their common expense liabilities or
4 credited to them to reduce their future common expense assessments

§36B-3-115. Assessments.

1 (a) Until the association makes a common expense assessment, the declarant shall pay

2 all common expenses. After an assessment has been made by the association, assessments
3 must be made at least annually, based on a budget adopted at least annually by the association.

4 (b) Except for assessments under subsections (c), (d), and (e), or as otherwise provided
5 in this chapter, all common expenses must be assessed against all the units in accordance with
6 the allocations set forth in the declaration pursuant to section 2-107(a) and (b). The association
7 may charge interest on any ~~Any past due common expense assessment or portion installment~~
8 ~~thereof bears interest~~ at the rate established by the association, not exceeding eighteen percent
9 per year.

10 (c) To the extent required by the declaration:

11 (1) ~~Any~~ A common expense associated with the maintenance, repair, or replacement of a
12 limited common element must be assessed against the units to which that limited common
13 element is assigned, equally, or in any other proportion the declaration provides;

14 (2) ~~Any~~ A common expense ~~or portion thereof~~ benefiting fewer than all of the units or their
15 owners must may be assessed exclusively against the units or unit owners benefitted; and

16 (3) The costs of insurance must be assessed in proportion to risk, and the costs of utilities
17 must be assessed in proportion to usage.

18 (d) Assessments to pay a judgment against the association (section 3-117(a)) may be
19 made only against the units in the common interest community at the time the judgment was
20 entered, in proportion to their common expense liabilities.

21 (e) If damage to a unit or other part of the common interest community, or if any other
22 common expense is caused by the willful misconduct or gross negligence of any unit owner or a
23 guest or invitee of a unit owner, the association may assess that expense exclusively against his
24 ~~unit. that owner's unit, even if the association maintains insurance with respect to that damage~~
25 or common expense.

26 (f) If common expense liabilities are reallocated, common expense assessments and any
 27 installment thereof not yet due must be recalculated in accordance with the reallocated common
 28 expense liabilities.

§36B-3-116. Lien for assessments sums due association; enforcement.

1 (a) The association has a statutory lien on a unit for any assessment ~~levied against~~
 2 attributable to that unit or fines imposed against its unit owner ~~from the time the assessment or~~
 3 ~~fine becomes due.~~ Unless the declaration otherwise provides, reasonable attorney's fees and
 4 costs, other fees, charges, late charges, fines, and interest charged pursuant to section 3-
 5 102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this
 6 chapter, or as a result of an administrative, arbitration, mediation, or judicial decision are
 7 enforceable in the same manner as unpaid assessments under this section. If an assessment is
 8 payable in installments, the lien is for the full amount of the assessment ~~is a lien~~ from the time the
 9 first installment thereof becomes due.

10 (b) A lien under this section is prior to all other liens and encumbrances on a unit except:

11 ~~(i)(1)~~ (1) Liens and encumbrances recorded ~~before~~ that the association creates, assumes, or takes
 12 a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes
 13 subject to;

14 ~~(ii)(2)~~ (2) Except as otherwise provided in subsection (c), a first security interest on the unit
 15 recorded before the date on which the assessment sought to be enforced became delinquent, or,
 16 in a cooperative, the first security interest encumbering only the unit owner's interest and
 17 perfected before the date on which the assessment sought to be enforced became delinquent;;
 18 and

19 ~~(iii)(3)~~ (3) Liens for real estate taxes and other governmental assessments or charges against
 20 the unit or cooperative.

21 (c) The A lien under this section is also prior to all security interests described in subsection
22 (b)(2) clause (ii) above to the extent of both the common expense assessments based on the
23 periodic budget adopted by the association pursuant to section 3-115(a) which would have
24 become due in the absence of acceleration during the six months immediately preceding
25 institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by
26 the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this
27 subsection does do not affect the priority of mechanics' or materialmen's liens, or the priority of
28 liens for other assessments made by the association. ~~(The lien under this section is not subject~~
29 ~~to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other~~
30 ~~exemptions).)~~ A lien under this section shall be void, as to creditors, and subsequent purchasers
31 for valuable consideration without notice, until and except from the time that it is duly admitted to
32 record in all counties wherein the unit situate. This followings our recording statute.

33 ~~(e)~~(d) Unless the declaration otherwise provides, if two or more associations have liens
34 for assessments created at any time on the same property, those liens have equal priority.

35 ~~(d)~~(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the
36 lien are instituted within three years after the full amount of the assessments becomes due.

37 ~~(e)~~(f) This section does not prohibit actions against unit owners to recover sums for which
38 subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

39 ~~(f)~~(g) A judgment or decree in any action brought under this section must include costs
40 and reasonable attorney's fees for the prevailing party and shall relate back for purposes of priority
41 to the date the association lien was recorded in the county clerk's office, and shall bear interest
42 at the rate set by the association for the original lien, not to exceed eighteen percent pursuant to
43 section 36B-3-115(b).

44 ~~(g)~~(h) The association upon ~~written~~ request made in a record shall furnish to a unit owner,

45 a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's
46 interest is real estate, the statement must be in recordable form. The statement must be furnished
47 within ten business days after receipt of the request and is binding on the association, the
48 executive board, and every unit owner. The trustee or trustees under a record deed of trust
49 encumbering a unit, or judicially appointed commissioner charged with the sale of a unit, has the
50 same rights under this paragraph as the owner of the encumbered unit.

51 ~~(h) For the purpose of perfecting and preserving its lien, the association shall give notice~~
52 ~~to the unit owner in the manner set forth in section one, article two, chapter fifty-six of this code,~~
53 ~~or by registered or certified mail, return receipt requested, and in a form reasonably calculated to~~
54 ~~inform the owner of his liability for payment of the assessment. The lien shall be discharged as to~~
55 ~~subsequent purchasers for value without notice unless the association shall cause to be recorded~~
56 ~~a notice of the lien in the office of the clerk of the county commission of any county wherein any~~
57 ~~part of the condominium is located. The notice shall contain:~~

58 ~~(1) A legally sufficient description of the unit;~~

59 ~~(2) The name or names of the owners of the unit;~~

60 ~~(3) The amount of unpaid assessments due together with the date when each fell due;~~

61 and

62 ~~(4) the date of the recordation.~~

63 ~~The clerk of the county commission in whose office the notice is recorded shall index the~~
64 ~~notice in the appropriate deedbooks and lien books in the name of the unit owners and of the~~
65 ~~association. The cost of recordation shall be assessed against any unit owner found to be~~
66 ~~delinquent in a subsequent proceeding to enforce the lien.~~

67 ~~Upon payment of the assessment, the association shall execute a written release of the~~
68 ~~lien in a manner set forth in section one, article twelve, chapter thirty-eight of this code. This~~

69 ~~release shall be recorded, at the expense of the association, in the clerk of the county commission~~
70 ~~wherein the notice of the lien was filed.~~

71 ~~(i) At any time before the association has disposed of a unit in a cooperative or entered~~
72 ~~into a contract for its disposition under the power of sale, the unit owners or the holder of any~~
73 ~~subordinate security interest may cure the unit owner's default and prevent the sale or other~~
74 ~~disposition by tendering the performance due under the security agreement, including any~~
75 ~~amounts due because of exercise of a right to accelerate, plus the reasonable expenses of~~
76 ~~proceeding to foreclosure incurred to the time of tender, including reasonable attorney fee's of~~
77 ~~the creditor.~~ In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may
78 be evicted in the same manner as provided by law in the case of an unlawful holdover by a
79 commercial tenant, and the lien may be foreclosed as provided by this section.

80 (j) For the purpose of facilitating requests to the association by trustees and judicially
81 appointed commissioners, the association shall at all times record its notice address in either the
82 office of the West Virginia Secretary of State, or in the office of the clerk of the county commission
83 of each county in which the common interest community is located.

84 (k) The association's lien may be foreclosed as provided in this subsection and subsection
85 (p) of this section:

86 (1) In a condominium or planned community, the association's lien must be foreclosed in
87 like manner as a mortgage on real estate;

88 (2) In a cooperative whose unit owners' interests in the units are real estate, the
89 association's lien must be foreclosed in like manner as a mortgage on real estate or by power of
90 sale under subsection (l); and

91 (3) In a cooperative whose unit owners' interests in the units are personal property, the
92 association's lien must be foreclosed in like manner as a security interest; and

93 (4) In a foreclosure under [insert reference to state power of sale statute], the association
94 shall give the notice required by statute or, if there is no such requirement, reasonable notice of
95 its action to all lien holders of the unit whose interest would be affected:

96 (l) If the unit owner's interest in a unit in a cooperative is real estate, the following
97 requirements apply:

98 (1) The association, upon nonpayment of assessments and compliance with this
99 subsection, may sell that unit at a public sale or by private negotiation, and at any time, date, and
100 place. The association shall give to the unit owner and any lessee of the unit owner reasonable
101 notice in a record of the time, date, and place of any public sale or, if a private sale is intended,
102 of the intention of entering into a contract to sell and of the time and date after which a private
103 disposition may be made. The same notice must also be sent to any other person that has a
104 recorded interest in the unit which would be cut off by the sale, but only if the recorded interest
105 was on record seven weeks before the date specified in the notice as the date of any public sale
106 or seven weeks before the date specified in the notice as the date after which a private sale may
107 be made. The notices required by this subsection may be sent to any address reasonable in the
108 circumstances. A sale may not be held until five weeks after the sending of the notice. The
109 association may buy at any public sale and, if the sale is conducted by a fiduciary or other person
110 not related to the association, at a private sale.

111 (2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure
112 sale.

113 (3) The proceeds of a foreclosure sale must be applied in the following order:

114 (A) The reasonable expenses of sale;

115 (B) The reasonable expenses of securing possession before sale; the reasonable
116 expenses of holding, maintaining, and preparing the unit for sale, including payment of taxes and

117 other governmental charges and premiums on insurance; and, to the extent provided for by
118 agreement between the association and the unit owner, reasonable attorney's fees, costs, and
119 other legal expenses incurred by the association;

120 (C) Satisfaction of the association's lien;

121 (D) Satisfaction in the order of priority of any subordinate claim of record; and

122 (E) Remittance of any excess to the unit owner.

123 (4) A good faith purchaser for value acquires the unit free of the association's debt that
124 gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even
125 though the association or other person conducting the sale failed to comply with this section. The
126 person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the
127 unit and stating that it is executed by the person after a foreclosure of the association's lien by
128 power of sale and that the person was empowered to make the sale. Signature and title or
129 authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment
130 of the assessment and of the giving of the notices required by this subsection are sufficient proof
131 of the facts recited and of the authority to sign. Further proof of authority is not required even
132 though the association is named as grantee in the conveyance.

133 (5) At any time before the association has disposed of a unit in a cooperative or entered
134 into a contract for its disposition under the power of sale, the unit owners or the holder of any
135 subordinate security interest may cure the unit owner's default and prevent sale or other
136 disposition by tendering the performance due under the security agreement, including any
137 amounts due because of exercise of a right to accelerate, plus the reasonable expenses of
138 proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees and
139 costs of the creditor.

140 (m) In an action by an association to collect assessments or to foreclose a lien on a unit

141 under this section, the court may appoint a receiver to collect all sums alleged to be due and
142 owing to a unit owner before commencement or during pendency of the action. The receivership
143 is governed by [insert state law generally applicable to receiverships]. The court may order the
144 receiver to pay any sums held by the receiver to the association during pendency of the action to
145 the extent of the association's common expense assessments based on a periodic budget
146 adopted by the association pursuant to section 3-115.

147 (n) An association may not commence an action to foreclose a lien on a unit under this
148 section unless:

149 (1) The unit owner, at the time the action is commenced, owes a sum equal to at least
150 three months of common expense assessments based on the periodic budget last adopted by
151 the association pursuant to section 3-115(a) and the unit owner has failed to accept or comply
152 with a payment plan offered by the association; and

153 (2) The executive board votes to commence a foreclosure action specifically against that
154 unit.

155 (o) Unless the parties otherwise agree, the association shall apply any sums paid by unit
156 owners that are delinquent in paying assessments in the following order:

157 (1) Unpaid assessments;

158 (2) Late charges;

159 (3) Reasonable attorney's fees and costs and other reasonable collection charges; and

160 (4) All other unpaid fees, charges, fines, penalties, interest, and late charges.

161 (p) If the only sums due with respect to a unit are fines and related sums imposed against
162 the unit, a foreclosure action may not be commenced against the unit unless the association has
163 a judgment against the unit owner for the fines and related sums and has perfected a judgment
164 lien against the unit under [insert reference to state statute on perfection of judgments].

165 (g) Every aspect of a foreclosure, sale, or other disposition under this section, including
166 the method, advertising, time, date, place, and terms, must be commercially reasonable.

§36B-3-117. Other liens.

1 (a) In a condominium or planned community:

2 (1) Except as otherwise provided in paragraph (2), a judgment for money against the
3 association (if recorded), is not a lien on the common elements, but is a lien in favor of the
4 judgment lien holder against all of the other real estate of the association and all of the units in
5 the common interest community at the time the judgment was entered. No other property of a
6 unit owner is subject to the claims of creditors of the association.

7 (2) If the association has granted a security interest in the common elements to a creditor
8 of the association pursuant to section 3-112, the holder of that security interest shall exercise its
9 right against the common elements before its judgment lien on any unit may be enforced.

10 (3) Whether perfected before or after the creation of the common interest community, if a
11 lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work
12 performed or materials supplied before creation of the common interest community, becomes
13 effective against two or more units, the unit owner of an affected unit may pay to the lien holder
14 the amount of the lien attributable to ~~his~~ the unit, and the lien holder, upon receipt of payment,
15 promptly shall deliver a release of the lien covering that unit. The amount of the payment must
16 be proportionate to the ratio ~~which~~ that the unit owner's common expense liability bears to the
17 common expense liabilities of all unit owners ~~whose~~ the units of which are subject to the lien. After
18 payment, the association may not assess or have a lien against that unit owner's unit for any
19 portion of the common expenses incurred in connection with that lien.

20 (4) A judgment against the association must be indexed in the name of the common
21 interest community and the association and, when so indexed, is notice of the lien against the

22 units.

23 (b) In a cooperative:

24 (1) If the association receives notice of an impending foreclosure on all or any portion of
25 the association's real estate, the association shall promptly transmit a copy of that notice to each
26 unit owner of a unit located within the real estate to be foreclosed. Failure of the association to
27 transmit the notice does not affect the validity of the foreclosure.

28 (2) Whether or not a unit owner's unit is subject to the claims of the association's creditors,
29 no other property of a unit owner is subject to those claims.

§36B-3-118. Association records.

1 (a) An association must retain the following:

2 (1) Detailed records of receipts and expenditures affecting the operation and
3 administration of the association and other appropriate accounting records;

4 (2) Minutes of all meetings of its unit owners and executive board other than executive
5 sessions, a record of all actions taken by the unit owners or executive board without a meeting,
6 and a record of all actions taken by a committee in place of the executive board on behalf of the
7 association;

8 (3) The names of unit owners in a form that permits preparation of a list of the names of
9 all owners and the addresses at which the association communicates with them, in alphabetical
10 order showing the number of votes each owner is entitled to cast;

11 (4) Its original or restated organizational documents, if required by law other than this
12 chapter, bylaws and all amendments to them, and all rules currently in effect;

13 (5) All financial statements and tax returns of the association for the past three years;

14 (6) A list of the names and addresses of its current executive board members and officers;

15 (7) Its most recent annual report delivered to the Secretary of State, if any;

16 (8) Financial and other records sufficiently detailed to enable the association to comply
17 with section 4-109;

18 (9) Copies of current contracts to which it is a party;

19 (10) Records of executive board or committee actions to approve or deny any requests
20 for design or architectural approval from unit owners; and

21 (11) Ballots, proxies, and other records related to voting by unit owners for one year after
22 the election, action, or vote to which they relate.

23 (b) Subject to subsections (c) and (d), all records retained by an association must be
24 available for examination and copying by a unit owner or the owner's authorized agent;

25 (1) During reasonable business hours or at a mutually convenient time and location; and

26 (2) Upon five days' notice in a record reasonably identifying the specific records of the
27 association requested.

28 (c) Records retained by an association may be withheld from inspection and copying to
29 the extent that they concern:

30 (1) Personnel, salary, and medical records relating to specific individuals;

31 (2) Contracts, leases, and other commercial transactions to purchase or provide goods or
32 services, currently being negotiated;

33 (3) Existing or potential litigation or mediation, arbitration, or administrative proceedings;

34 (4) Existing or potential matters involving federal, state, or local administrative or other
35 formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or
36 rules;

37 (5) Communications with the association's attorney which are otherwise protected by the
38 attorney-client privilege or the attorney work-product doctrine;

39 (6) Information the disclosure of which would violate law other than this chapter;

40 (7) Records of an executive session of the executive board; or

41 (8) Individual unit files other than those of the requesting owner.

42 (d) An association may charge a reasonable fee for providing copies of any records under
43 this section and for supervising the unit owner's inspection.

44 (e) A right to copy records under this section includes the right to receive copies by
45 photocopying or other means, including copies through an electronic transmission if available
46 upon request by the unit owner.

47 (f) An association is not obligated to compile or synthesize information.

48 (g) Information provided pursuant to this section may not be used for commercial
49 purposes.

§36B-3-120. Rules.

1 (a) Before adopting, amending, or repealing any rule, the executive board shall give all
2 unit owners notice of:

3 (1) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the
4 proposed change; and

5 (2) A date on which the executive board will act on the proposed rule or amendment after
6 considering comments from unit owners.

7 (b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit
8 owners of its action and provide a copy of any new or revised rule.

9 (c) An association may adopt rules to establish and enforce construction and design
10 criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the
11 association shall adopt procedures for enforcement of those standards and for approval of
12 construction applications, including a reasonable time within which the association must act after
13 an application is submitted and the consequences of its failure to act.

14 (d) A rule regarding displaying of the flag of the United States must be consistent with
15 federal law. In addition, the association may not prohibit display on a unit or on a limited common
16 element adjoining a unit of the flag of this state, or signs regarding candidates for public or
17 association office or ballot questions, but the association may adopt rules governing the time,
18 place, size, number, and manner of those displays.

19 (e) Unit owners may peacefully assemble on the common elements to consider matters
20 related to the common interest community, but the association may adopt rules governing the
21 time, place, and manner of those assemblies.

22 (f) An association may adopt rules that affect the use of or behavior in units that may be
23 used for residential purposes, only to:

24 (1) Implement a provision of the declaration;

25 (2) Regulate any behavior in or occupancy of a unit which violates the declaration or
26 adversely affects the use and enjoyment of other units or the common elements by other unit
27 owners; or

28 (3) Restrict the leasing of residential units to the extent those rules are reasonably
29 designed to meet underwriting requirements of institutional lenders that regularly make loans
30 secured by first mortgages on units in common interest communities or regularly purchase those
31 mortgages.

32 (g) An association's internal business operating procedures need not be adopted as rules.

33 (h) Every rule must be reasonable.

§36B-3-121. Notice to unit owners.

1 (a) An association shall deliver any notice required to be given by the association under
2 this chapter to any mailing or electronic mail address a unit owner designates. Otherwise, the
3 association may deliver notices by:

4 (1) Hand delivery to each unit owner;

5 (2) Hand delivery, United States mail postage paid, or commercially reasonable delivery
6 service to the mailing address of each unit;

7 (3) Electronic means, if the unit owner has given the association an electronic address; or

8 (4) Any other method reasonably calculated to provide notice to the unit owner.

9 (b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does
10 not invalidate action taken at or without a meeting.

§36B-3-122. Removal of officers and directors.

1 (a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners
2 present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a
3 quorum is present, may remove any member of the executive board and any officer elected by
4 the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds
5 the number of votes cast in opposition to removal, but:

6 (1) A member appointed by the declarant may not be removed by a unit owner vote during
7 the period of declarant control;

8 (2) A member appointed under subdivision 3-103(g) may be removed only by the person
9 that appointed that member; and

10 (3) The unit owners may not consider whether to remove a member of the executive board
11 or an officer elected by the unit owners at a meeting of the unit owners unless that subject was
12 listed in the notice of the meeting.

13 (b) At any meeting at which a vote to remove a member of the executive board or an officer
14 is to be taken, the member or officer being considered for removal must have a reasonable
15 opportunity to speak before the vote.

§36B-3-123. Adoption of budgets; special assessments.

1 (a) The executive board, at least annually, shall adopt a proposed budget for the common
2 interest community for consideration by the unit owners. Not later than thirty days after adoption
3 of a proposed budget, the executive board shall provide to all the unit owners a summary of the
4 budget, including any reserves, and a statement of the basis on which any reserves are calculated
5 and funded. Simultaneously, the board shall set a date not less than ten days or more than sixty
6 days after providing the summary for a meeting of the unit owners to consider ratification of the
7 budget. Unless at that meeting a majority of all unit owners or any larger number specified in the
8 declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a
9 proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners
10 ratify a subsequent budget.

11 (b) The executive board, at any time, may propose a special assessment. Except as
12 otherwise provided in subsections (c) and (d), the assessment is effective only if the executive
13 board follows the procedures for ratification of a budget described in subsection (a) and the unit
14 owners do not reject the proposed assessment.

15 (c) If the executive board determines by a two-thirds vote that a special assessment is
16 necessary to respond to an emergency:

17 (1) The special assessment becomes effective immediately in accordance with the terms
18 of the vote;

19 (2) Notice of the emergency assessment must be provided promptly to all unit owners;
20 and

21 (3) The executive board may spend the funds paid on account of the emergency
22 assessment only for the purposes described in the vote.

23 (d) The board may not levy a special assessment for the purpose of circumventing the
24 annual budget requirements of subsection (a).

§36B-3-124. Litigation involving declarant.

1 (a) The following requirements apply to an association's authority under subdivision 3-
2 102(a)(4) to institute and maintain a proceeding alleging a construction defect with respect to the
3 common interest community, whether by litigation, mediation, arbitration, or administratively,
4 against a declarant or an employee, independent contractor, or other person directly or indirectly
5 providing labor or materials to a declarant:

6 (1) Subject to subsection (e), before the association institutes a proceeding described in
7 this section, it shall provide notice in a record of its claims to the declarant and those persons that
8 the association seeks to hold liable for the claimed defects. The text of the notice may be in any
9 form reasonably calculated to give notice of the general nature of the association's claims,
10 including a list of the claimed defects. The notice may be delivered by any method of service and
11 may be addressed to any person if the method of service used:

12 (A) Provides actual notice to the person named in the claim; or

13 (B) Would be sufficient to give notice to the person in connection with commencement of
14 an action by the association against the person.

15 (2) Subject to subsection (e), the association may not institute a proceeding against a
16 person until forty-five days after the association sends notice of its claim to that person.

17 (3) During the period described in subdivision (2), the declarant and any other person to
18 which the association gave notice may present to the association a plan to repair or otherwise
19 remedy the construction defects described in the notice. If the association does not receive a
20 timely remediation plan from a person to which it gave notice, or if the association does not accept
21 the terms of any plan submitted, the association may institute a proceeding against the person.

22 (4) If the association receives one or more timely remediation plans, the executive board
23 shall consider promptly those plans and notify the persons to which it directed notice whether the

24 plan is acceptable as presented, acceptable with stated conditions, or not accepted.

25 (5) If the association accepts a remediation plan from a person the association seeks to
26 hold liable for the claimed defect, or if a person agrees to stated conditions to an otherwise
27 acceptable plan, the parties shall agree on a period for implementation of the plan. The
28 association may not institute a proceeding against the person during the time the plan is being
29 diligently implemented.

30 (6) Except as otherwise provided in subdivision 4-116(d) for warranty claims, any statute
31 of limitation affecting the association's right of action against a declarant or other person is tolled
32 during the period described in subdivision (2) and during any extension of that time because a
33 person to which notice was directed has commenced and is diligently pursuing the remediation
34 plan.

35 (b) After the time described in subsection (a)(2) expires, whether or not the association
36 agrees to any remediation plan, a proceeding may be instituted by:

37 (1) The association against a person to which notice was directed which fails to submit a
38 timely remediation plan, the plan of which is not acceptable, or which fails to pursue diligent
39 implementation of that plan; or

40 (2) A unit owner with respect to the owner's unit and any limited common elements
41 assigned to that unit, regardless of any action of the association.

42 (c) This section does not preclude the association from making repairs necessary to
43 mitigate damages or to correct any defect that poses a significant and immediate health or safety
44 risk.

45 (d) Subject to the other provisions of this subsection, the determination of whether and
46 when the association may institute a proceeding described in this subsection may be made by
47 the executive board. The declaration may not require a vote by any number or percent of unit

48 owners as a condition to institution of a proceeding.

49 (e) This subsection does not prevent an association from seeking equitable relief at any
 50 time without complying with subsection (a)(1) or (2).

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.

1 (a) This article applies to all units subject to this chapter, except as provided in subsection
 2 (b) or as modified or waived by agreement of purchasers of units in a common interest community
 3 in which all units are restricted to nonresidential use.

4 (b) Neither a public offering statement nor a resale certificate need be prepared or
 5 delivered in the case of:

6 (1) A gratuitous disposition of a unit;

7 (2) A disposition pursuant to court order;

8 (3) A disposition by a government or governmental agency;

9 (4) A disposition by foreclosure or deed in lieu of foreclosure;

10 (5) A disposition to a dealer; or

11 ~~(6) A disposition that may be canceled at any time and for any reason by the purchaser~~
 12 ~~without penalty;~~

13 ~~(7) A disposition of a unit in a planned community in which the declaration limits the~~
 14 ~~maximum annual assessment of any unit to not more than five hundred dollars, as adjusted~~
 15 ~~pursuant to section 1-114 (Adjustment of dollar amounts) if:~~

16 ~~(i) The declarant has a reasonable and good faith belief that the maximum stated~~
 17 ~~assessment will be sufficient to pay the expenses of the planned community;~~

18 ~~(ii) The declaration cannot be amended to increase the assessment during the period of~~
 19 ~~declarant or declarant's family control without the consent of a majority of unit owners other than~~

20 ~~the declarant; and~~

21 ~~(iii) The planned community is not subject to any development rights.~~

22 (6) A disposition of a unit restricted to nonresidential purposes.

§36B-4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.

1 (a) Except as otherwise provided in subsection (b), a declarant, before offering any interest
2 in a unit to the public, shall prepare a public offering statement conforming to the requirements of
3 sections 4-103, 4-104, 4-105, and 4-106.

4 (b) A declarant may transfer responsibility for preparation of all or a part of the public
5 offering statement to a successor declarant (section 3-104) or to a dealer ~~who~~ that intends to offer
6 units in the common interest community. In the event of any such transfer, the transferor shall
7 provide the transferee with any information necessary to enable the transferee to fulfill the
8 requirements of subsection (a).

9 (c) Any declarant or dealer ~~who~~ that offers a unit to a purchaser shall deliver a public
10 offering statement in the manner prescribed in ~~subsection~~ section 4-108(a). The ~~person~~ declarant
11 or dealer ~~who~~ that prepared all or a part of the public offering statement is liable under sections
12 4-108 and 4-117 for any false or misleading statement set forth therein or for any omission of a
13 material fact therefrom, ~~with respect to that portion of the public offering statement which he~~
14 ~~prepared. If a declarant did not prepare any part of a public offering statement that he delivers,~~
15 ~~he is not liable for any false or misleading statement set forth therein or for any omission of a~~
16 ~~material fact therefrom unless he had actual knowledge of the statement or omission or, in the~~
17 ~~exercise of reasonable care, should have known of the statement or omission.~~

18 (d) If a unit is part of a common interest community and is part of any other real estate
19 regime in connection with the sale of which the delivery of a public offering statement is required
20 under the laws of this state, a single public offering statement conforming to the requirements of

21 sections 4-103, 4-104, 4-105, and 4-106 as those requirements relate to each regime in which
22 the unit is located, and to any other requirements imposed under the laws of this state, may be
23 prepared and delivered in lieu of providing two or more public offering statements.

§36B-4-103. Public offering statement; general provisions.

1 (a) Except as provided in subsection (b), a public offering statement must contain or fully
2 and accurately disclose:

3 (1) The name and principal address of the declarant and of the common interest
4 community and a statement that the common interest community is either a condominium,
5 cooperative or planned community;

6 (2) A general description of the common interest community, including to the extent
7 possible, the types, number, and declarant's schedule of commencement and completion of
8 construction of buildings and amenities that the declarant anticipates including in the common
9 interest community;

10 (3) The number of units in the common interest community;

11 (4) Copies and a brief narrative description of the significant features of the declaration,
12 other than any plats and plans and any other recorded covenants, conditions, restrictions and
13 reservations affecting the common interest community; the bylaws and any rules or regulations
14 of the association; copies of any contracts and leases to be signed by purchasers at closing and
15 a brief narrative description of any contracts or leases that will or may be subject to cancellation
16 by the association under section 3-105;

17 (5) The financial information required by subsection (b). ~~Any current balance sheet and a~~
18 ~~projected budget for the association, either within or as an exhibit to the public offering statement,~~
19 ~~for one year after the date of the first conveyance to a purchaser and thereafter the current budget~~
20 ~~of the association, a statement of who prepared the budget and a statement of the budget's~~

21 ~~assumptions concerning occupancy and inflation factors. The budget must include, without~~
22 ~~limitation:~~

23 ~~(i) A statement of the amount or a statement that there is no amount, included in the budget~~
24 ~~as a reserve for repairs and replacement;~~

25 ~~(ii) A statement of any other reserves;~~

26 ~~(iii) The projected common expense assessment by category of expenditures for the~~
27 ~~association; and~~

28 ~~(iv) The projected monthly common expense assessment for each type of unit;~~

29 (6) Any services not reflected in the budget that the declarant provides, or expenses that
30 he or she pays and which he or she expects may become at any subsequent time a common
31 expense of the association and the projected common expense assessment attributable to each
32 of those services or expenses for the association and for each type of unit;

33 (7) Any initial or special fee due from the purchaser or seller at the time of sale, ~~closing~~,
34 together with a description of the purpose and method of calculating the fee;

35 (8) A description of any liens, defects, or encumbrances on or affecting the title to the
36 common interest community;

37 (9) A description of any financing offered or arranged by the declarant;

38 (10) The terms and significant limitations of any warranties provided by the declarant,
39 including statutory warranties and limitations on the enforcement thereof or on damages;

40 (11) A statement that:

41 ~~(i)~~ (A) Within fifteen days after receipt of a public offering statement a purchaser, before
42 conveyance, may cancel any contract for purchase of a unit from a declarant;

43 ~~(ii)~~ (B) If a declarant fails to provide a public offering statement to a purchaser before
44 conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of

45 the unit plus ten percent of the share, proportionate to his or her common expense liability, of any
46 indebtedness of the association secured by security interests encumbering the common interest
47 community: ~~Provided, That purchaser is required to show that he or she has been actually~~
48 ~~damaged as a result of the failure to provide such offering statement and that his or her action to~~
49 ~~recover such damage and the penalty provided in this paragraph is instituted within three years~~
50 ~~from the date on which purchaser's right of action shall have accrued; and~~

51 (iii) (C) If a purchaser receives the public offering statement more than fifteen days before
52 signing a contract, he or she ~~cannot~~ may not cancel the contract;

53 (12) A statement of any unsatisfied judgments or pending ~~suits~~ action against the
54 association and the status of any pending ~~suits~~ action material to the common interest community
55 of which a declarant has actual knowledge;

56 (13) A statement that any deposit made in connection with the purchase of a unit will be
57 held in an escrow account until closing and will be returned to the purchaser if the purchaser
58 cancels the contract pursuant to section 4-108, together with the name and address of the escrow
59 agent;

60 (14) Any restraints on alienation of any portion of the common interest community and any
61 restrictions:

62 (i) (A) On use, occupancy, and alienation of the units; and (ii) (B) On the amount for which
63 a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation
64 or casualty loss to the unit or to the common interest community or on termination of the common
65 interest community;

66 (15) A description of the insurance coverage provided for the benefit of unit owners;

67 (16) Any current or expected fees or charges to be paid by unit owners for the use of the
68 common elements and other facilities related to the common interest community;

69 (17) The extent to which financial arrangements have been provided for completion of all
70 improvements that the declarant is obligated to build pursuant to section 4-119 (declarant's
71 obligation to complete and restore);

72 (18) A brief narrative description of any zoning and other land use requirements affecting
73 the common interest community;

74 (19) ~~All~~ Any other unusual and material circumstances, features and characteristics of the
75 common interest community and the units; ~~and~~

76 (20) In a cooperative, whether ~~(i) Whether~~ the unit owners will be entitled, for federal, state
77 and local income tax purposes, to a pass through of deductions for payments made by the
78 association for real estate taxes and interest paid the holder of a security interest encumbering
79 the cooperative, and ~~(ii)~~ a statement as to the effect on every unit owner if the association fails to
80 pay real estate taxes or payments due the holder of a security interest encumbering the
81 cooperative; and

82 (21) A description of any arrangement described in section 1-209 binding the association.

83 (b) The public offering statement must contain any current balance sheet and a projected
84 budget for the association, either within or as an exhibit to the public offering statement, for one
85 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the
86 association, a statement of who prepared the budget, and a statement of the budget's
87 assumptions concerning occupancy and inflation factors. The budget must include:

88 (A) A statement of the amount, or a statement that there is no amount, included in the
89 budget as a reserve for repairs and replacement;

90 (B) A statement of any other reserves;

91 (C) The proposed common expense assessment by category of expenditures for the
92 association; and

93 (D) The projected monthly common expense assessment for each type of unit.

94 ~~(b)~~ (c) If a common interest community composed of not more than twelve units is not
95 subject to any development ~~rights~~ right and no power is reserved to a declarant to make the
96 common interest community part of a larger common interest community, group of common
97 interest communities, or other real estate, a public offering statement may ~~but need not~~ include
98 the information otherwise required by ~~paragraphs~~ subdivisions (9), (10), (15), (16), (17), (18) and
99 (19) of subsection (a) of this section and the narrative descriptions of documents required by
100 subsection (a)(4).

101 ~~(e)~~ (d) A declarant promptly shall amend the public offering statement to report any
102 material change in the information required by this section.

§36B-4-108. Purchaser's right to cancel.

1 (a) A person required to deliver a public offering statement pursuant to section 4-102(c)
2 shall provide a purchaser with a copy of the public offering statement and all amendments thereto
3 before conveyance of the unit, and not later than the date of any contract of sale. Unless a
4 purchaser is given the public offering statement more than fifteen days before execution of a
5 contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract
6 within fifteen days after first receiving the public offering statement.

7 (b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by
8 hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States
9 mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all
10 payments made by the purchaser before cancellation must be refunded promptly.

11 (c) If a person required to deliver a public offering statement pursuant to section 4-102(c)
12 fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all
13 amendments thereto as required by subsection (a), the purchaser, in addition to any rights to

14 damages or other relief, is entitled to receive from that person an amount equal to ten percent of
15 the sale price of the unit, plus ten percent of the share, proportionate to his common expense
16 liability, of any indebtedness of the association secured by security interests encumbering the
17 common interest community. ~~Provided, That purchaser show that he or she has been actually~~
18 ~~damaged as a result of the failure to provide such offering statement and that his or her action to~~
19 ~~recover such damage and the penalty provided in this subsection is instituted within three years~~
20 ~~from the date on which purchaser's right of action shall have accrued.~~

§36B-4-109. Resales of units.

1 (a) Except in the case of a sale in which delivery of a public offering statement is required,
2 or unless exempt under section 4-101(b), a unit owner shall furnish to a purchaser before
3 execution of any contract for sale of a unit, or otherwise by conveyance, a copy of the declaration
4 ~~(other than any plats and plans),~~ the earlier of conveyance or transfer of the right to possession
5 of a unit, a copy of the declaration, other than any plats and plans, the bylaws, the rules or
6 regulations of the association, and a certificate containing:

7 (1) A statement disclosing the effect on the proposed disposition of any right of first refusal
8 or other restraint on the free alienability of the unit held by the association;

9 (2) A statement setting forth the amount of the ~~monthly~~ periodic common expense
10 assessment and any unpaid common expense or special assessment currently due and payable
11 from the selling unit owner;

12 (3) A statement of any other fees payable by the owner of the unit being sold; ~~unit owners;~~

13 (4) A statement of any capital expenditures ~~anticipated~~ approved by the association for
14 the current and ~~two next~~ succeeding fiscal years;

15 (5) A statement of the amount of any reserves for capital expenditures and of any portions
16 of those reserves designated by the association for any specified projects;

17 (6) The most recent regularly prepared balance sheet and income and expense statement,
18 if any, of the association;

19 (7) The current operating budget of the association;

20 (8) A statement of any unsatisfied judgments against the association and the status of any
21 pending suits in which the association is a defendant;

22 (9) A statement describing any insurance coverage provided for the benefit of unit owners;

23 (10) A statement as to whether the executive board has ~~knowledge that any given or~~
24 received notice in a record that any existing uses, occupancies, alterations or improvements in or
25 to the unit or to the limited common elements assigned thereto violate any provision of the
26 declaration;

27 (11) A statement as to whether the executive board has ~~knowledge of any violations of~~
28 ~~the health~~ received notice in a record from a governmental agency of any violation of
29 environmental, health, or building codes with respect to the unit, the limited common elements
30 assigned thereto, or any other portion of the common interest community which has not been
31 cured;

32 (12) A statement of the remaining term of any leasehold estate affecting the common
33 interest community and the provisions governing any extension or renewal thereof;

34 (13) A statement of any restrictions in the declaration affecting the amount that may be
35 received by a unit owner upon sale, condemnation, casualty loss to the unit or the common
36 interest community, or termination of the common interest community; ~~and~~

37 (14) In a cooperative, an accountant's statement, if any was prepared, as to the
38 deductibility for federal income tax purposes by the unit owner of real estate taxes and interest
39 paid by the association;

40 (15) A statement describing any pending sale or encumbrance of common elements; and

41 (16) A statement disclosing the effect on the unit to be conveyed of any restrictions on the
42 owner's right to use or occupy the unit or to lease the unit to another person.

43 (b) The association, within ten days after a request by a unit owner, shall furnish a
44 certificate containing the information necessary to enable the unit owner to comply with this
45 section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the
46 purchaser for any erroneous information provided by the association and included in the
47 certificate.

48 (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set
49 forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for
50 the failure or delay of the association to provide the certificate in a timely manner, but the purchase
51 contract is voidable by the purchaser until the certificate has been provided and for five days
52 thereafter or until conveyance, whichever first occurs.

§36B-4-112. Conversion buildings.

1 (a) A declarant of a common interest community containing conversion buildings, and any
2 dealer who intends to offer units in such a common interest community, shall give each of the
3 residential tenants and any residential subtenant in possession of a portion of a conversion
4 building notice of the conversion and provide those persons with the public offering statement no
5 later than one hundred twenty days before the tenants and any subtenant in possession are
6 required to vacate. The notice must set forth generally the rights of tenants and subtenants under
7 this section and must be hand delivered to the unit or mailed by prepaid United States mail to the
8 tenant and subtenant at the address of the unit or any other mailing address provided by a tenant.
9 No tenant or subtenant may be required to vacate upon less than one hundred twenty days'
10 notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants'
11 peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that

12 period. Failure to give notice as required by this section is a defense to an action for possession.

13 (b) For sixty days after delivery or mailing of the notice described in subsection (a), the
14 person required to give the notice shall offer to convey each unit or proposed unit occupied for
15 residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that
16 sixty day period, the offeror may not offer to dispose of an interest in that unit during the following
17 one hundred eighty days at a price or on terms more favorable to the offeree than the price or
18 terms offered to the tenant. This subsection does not apply to any unit in a conversion building if
19 that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit
20 do not substantially conform to the dimensions of the residential unit before conversion.

21 (c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who
22 has no knowledge of the violation, the recordation of the deed conveying the unit or, in a
23 cooperative, the conveyance of the unit, extinguishes any right a tenant may have under
24 subsection (b) to purchase that unit if the deed states that the seller has complied with subsection
25 (b), but the conveyances does not affect the right of a tenant to recover damages from the seller
26 for a violation of subsection (b).

27 (d) If a notice of conversion specifies a date by which a unit or proposed unit must be
28 vacated and otherwise complies with the provisions of applicable law, the notice also constitutes
29 a notice to vacate specified by that statute.

30 ~~(d)~~ (e) Nothing in this section permits termination of a lease by a declarant in violation of
31 its terms.

§36B-4-113. Express warranties of quality.

1 (a) Express warranties made by ~~any seller~~ a declarant to a purchaser of a unit, if relied
2 upon by the purchaser, are created as follows:

3 (1) Any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant

4 thereto, area improvements to the common interest community that would directly benefit the unit,
5 or the right to use or have the benefit of facilities not located in the common interest community,
6 creates an express warranty that the unit and related rights and uses will conform to the
7 affirmation or promise;

8 (2) Any model or description of the physical characteristics of the common interest
9 community, including plans and specifications of or for improvements, creates an express
10 warranty that the common interest community will conform to the model or description unless the
11 model or description clearly discloses that it is only proposed or is subject to change;

12 (3) Any description of the quantity or extent of the real estate comprising the common
13 interest community, including plats or surveys, creates an express warranty that the common
14 interest community will conform to the description, subject to customary tolerances; and

15 (4) A provision that a purchaser may put a unit only to a specified use is an express
16 warranty that the specified use is lawful.

17 (b) Neither formal words, such as “warranty” or “guarantee,” nor a specific intention to
18 make a warranty, are necessary to create an express warranty of quality, but a statement
19 purporting to be merely an opinion or commendation of the real estate or its value does not create
20 a warranty.

21 (c) Any conveyance of a unit transfers to the purchaser all express warranties of quality
22 made by ~~previous sellers.~~ the declarant.

§36B-4-114. Implied warranties of quality.

1 (a) A declarant and any dealer warrants that a unit will be in at least as good condition at
2 the earlier of the time of the conveyance or delivery of possession as it was at the time of
3 contracting, reasonable wear and tear excepted.

4 (b) A declarant and any dealer impliedly warrants that a unit and the common elements in

5 the common interest community are suitable for the ordinary uses of real estate of its type and
6 that any improvements made or contracted for by ~~him~~, the declarant or dealer, or made by any
7 person before the creation of the common interest community, will be:

8 (1) Free from defective materials; and

9 (2) Constructed in accordance with applicable law, according to sound engineering and
10 construction standards, and in a workmanlike manner.

11 (c) ~~In addition,~~ A declarant and any dealer warrants to a purchaser of a unit that may be
12 used for residential use that an existing use, continuation of which is contemplated by the parties,
13 does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

14 (d) Warranties imposed by this section may be excluded or modified as specified in section
15 4-115.

16 (e) For purposes of this section, improvements made or contracted for by an affiliate of a
17 declarant (section 1-103(1)) are made or contracted for by the declarant.

18 (f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied
19 warranties of quality.

§36B-4-116. Statute of limitations for warranties.

1 (a) Unless a period of limitation is tolled under section 3-111 or affected by subsection (d),
2 a judicial proceeding for breach of any obligation arising under section 4-113 or 4-114 must be
3 commenced within six years after the cause of action accrues, but the parties may agree to reduce
4 the period of limitation to not less than two years. With respect to a unit that may be occupied for
5 residential use, an agreement to reduce the period of limitation must be evidenced by a separate
6 instrument executed by the purchaser.

7 (b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless
8 of the purchaser's lack of knowledge of the breach, accrues:

9 (1) As to a unit, at the time the purchaser to whom the warranty is first made enters into
10 possession if a possessory interest was conveyed or at the time of acceptance of the instrument
11 of conveyance if a nonpossessory interest was conveyed; and

12 (2) As to each common element, at the time the common element is completed or, if later,
13 as to:

14 (i) (A) A common element that ~~may be~~ is added to the common interest community or
15 ~~portion thereof, by exercise of development rights,~~ at the time the first unit ~~therein~~ which was
16 added to the condominium by the same exercise of development rights is conveyed to a bona
17 fide purchaser; or

18 (ii) (B) a common element within any other portion of the common interest community, at
19 the time the first unit is conveyed to a bona fide purchaser.

20 (c) If a warranty of quality explicitly extends to future performance or duration of any
21 improvement or component of the common interest community, the cause of action accrues at
22 the time the breach is discovered or at the end of the period for which the warranty explicitly
23 extends, whichever is earlier.

24 (d) During the period of declarant control, the association may authorize an independent
25 committee of the executive board to evaluate and enforce any warranty claims involving the
26 common elements, and to compromise those claims. Only members of the executive board
27 elected by unit owners other than the declarant and other persons appointed by those
28 independent members may serve on the committee, and the committee's decision must be free
29 of any control by the declarant or any member of the executive board or officer appointed by the
30 declarant. All costs reasonably incurred by the committee, including attorney's fees, are common
31 expenses, and must be added to the budget annually adopted by the association under section
32 3-115. If the committee is so created, the period of limitation for a warranty claim considered by

33 the committee begins to run from the date of the first meeting of the committee.

§36B-4-117. Effect of violations on rights of action; attorney's fees.

1 ~~(a) If a declarant or any other person subject to this chapter fails to comply with any of its~~
2 ~~provisions or any provision of the declaration or bylaws, any person or class of persons adversely~~
3 ~~affected by the failure to comply has a claim for appropriate relief. A declarant, association, unit~~
4 ~~owner, or any other person subject to this chapter may bring an action to enforce a right granted~~
5 ~~or obligation imposed by this chapter, the declaration, or the bylaws. Punitive damages may be~~
6 ~~awarded for a willful failure to comply with this chapter. The court ~~in an appropriate case,~~ may~~
7 ~~award reasonable attorney's fees and costs.~~

8 ~~(b) Parties to a dispute arising under this chapter, the declaration, or the bylaws may agree~~
9 ~~to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:~~

10 ~~(1) A declarant may agree with the association to do so only after the period of declarant~~
11 ~~control has expired unless the agreement is made with an independent committee of the~~
12 ~~executive board elected pursuant to subdivision 4-116(d); and~~

13 ~~(2) An agreement to submit to any form of binding alternative dispute resolution must be~~
14 ~~in a record authenticated by the parties.~~

NOTE: The purpose of this bill is to update the Uniform Common Interest
Ownership Act..

Strike-throughs indicate language that would be stricken from the present law and
underscoring indicates new language that would be added.

§36B-3-110, §36B-3-111 and §36B-3-118 have been totally rewritten; therefore,
they have been completely underscored.